Supreme Court, U.S.
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No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

DOREEN KEELER; and
PLANNED PARENTHOOD OF LOUISIANA, INC.,

Petitioners,

— v. —

RICHARD L. STALDER, Secretary,
Department of Public Safety and Corrections;
and JOHN KENNEDY, State Treasurer,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Did the court of appeals err in expanding the scope of the Tax Injunction Act to divest the federal courts of jurisdiction in a challenge to a viewpoint discriminatory forum for speech where that challenge was brought by plaintiffs who were not seeking to avoid paying the fee required to enter into the forum, but rather were contesting the state's refusal to allow them to pay the fee and enter into the forum to express their own views?

RULE 29.6 CORPORATE DISCLOSURE STATEMENT

No Petitioner is a publicly held corporation.

TABLE OF CONTENTS

QUESTIONS PRESENTED i

CORPORATE DISCLOSURE STATEMENT ii

TABLE OF AUTHORITIES iv

OPINIONS BELOW 1

JURISDICTION 1

CONSTITUTIONAL PROVISIONS AND STATUTES ... 1

STATEMENT OF THE CASE 2

I. The Viewpoint-Discriminatory Forum 2

II. History of the Proceedings. 4

REASONS FOR GRANTING THE WRIT 8

I. The Decision of the Court of Appeals Conflicts with the Decision of the United States Court of Appeals for the Sixth Circuit Holding that the Tax Injunction Act Is Inapplicable to a Challenge to a "Choose Life" License Plate. 11

II. The Decision of the Court of Appeals Conflicts with this Court's Decision in *Hibbs v. Winn*, 542 U.S. 88 (2004), Because It Construes the Tax Injunction Act to Bar Plaintiffs' Suit, Even Though They Do Not Contest Their Own State Tax Liability. 13

III. The Decision of the Court of Appeals Presents An Important Question Concerning the Definition of "Tax" Under the Tax Injunction Act Which Has Not, But Should Be, Decided By this Court. 15

CONCLUSION 18

TABLE OF AUTHORITIES

Cases **Page**

ACLU of Tennessee v. Bredesen, --- F.3d ---, No. 04-6393, 2006 WL 664372 (6th Cir. Mar. 17, 2006) 8, 11, 12, 13

California v. Grace Brethren Church, 457 U.S. 393, 410 (1982) 8, 14-15, 16

Fair Assessment in Real Estate Ass'n, Inc. v. McNary, 454 U.S. 100 (1981) 15, 16

Fla. Cent. & Peninsular R.R. Co. v. Reynolds, 183 U.S. 471 (1902) 11

Henderson v. Stalder, 434 F.3d 352 (5th Cir. 2005) 1, 10, 15

Henderson v. Stalder, 407 F.3d 351 (5th Cir. 2005) ..... *passim*

Henderson v. Stalder, 287 F.3d 374 (5th Cir. 2002) 5

Henderson v. Stalder, 281 F. Supp. 2d 866 (E.D. La. 2003) 1, 7, 16-17

Henderson v. Stalder, 265 F. Supp. 2d 699 (E.D. La. 2003) 1, 2, 6

Henderson v. Stalder, No. 00-2237, 2000 WL 1875987 (E.D. La. Dec. 22, 2000) 5

Henderson v. Stalder, 112 F. Supp. 2d 589 (E.D. La. 2000) 4

Hibbs v. Winn, 542 U.S. 88 (2004) ..... *passim*

Hill v. Kemp, No. 04-CV-0028, slip. op. (N.D. Okla. Aug. 16, 2005), *appeal pending*, No. 05-5160 (10th Cir. docketed Sept. 15, 2005). 9

Jefferson County v. Acker, 527 U.S. 423 (1999) 9

Meriwether v. Garrett, 102 U.S. 472 (1880) 11

New Jersey v. Anderson, 203 U.S. 483 (1906) 11

Planned Parenthood of S.C. v. Rose,
361 F.3d 786 (4th Cir. 2004),
cert. denied, 543 U.S. 1119 (2005) 9, 12

Sons of Confederate Veterans, Inc. v. Comm'r,
Va. Dep't of Motor Vehicles,
288 F.3d 610 (4th Cir. 2002) 12

Women's Resource Network v. Gourley,
305 F. Supp. 2d. 1145 (E.D. Ca. 2004) 12

United States Constitution, Statutes and Rules

U.S. Const. amend I 1

U.S. Const. amend. XIV 1

28 U.S.C. § 1254 1

28 U.S.C. § 1292(a)(1) 5

28 U.S.C. § 1292(b) 5

28 U.S.C. § 1341 ("Tax Injunction Act") ..... *passim*

Sup. Ct. R. 10(a) 9

Sup. Ct. R. 10(c) 10, 11

Louisiana Constitution and Statutes

La. Const. art. VII, § 2 16

La. Const. art. III, § 2(A)(3) 17

La. Rev. Stat. § 47:463.61 3

La. Rev. Stat. § 47:463.61(E)(1) 4

La. Rev. Stat. § 47:463.61(F)(2) 3

La. Rev. Stat. § 47:505 2

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit is reported at *Henderson v. Stalder*, 407 F.3d 351 (5th Cir. 2005), and is reproduced in the appendix to this petition at A-1-16. The order of the court of appeals denying rehearing *en banc* and the dissenting opinion joined by eight Circuit Judges is reported at *Henderson v. Stalder*, 434 F.3d 352 (5th Cir. 2005), and is reproduced in the appendix at A-75-83. The opinion of the district court denying a motion for a stay pending appeal is reported at *Henderson v. Stalder*, 281 F. Supp. 2d 866 (E.D. La. 2003), and is reproduced in the appendix at A-55-74. The opinion of the district court is reported at *Henderson v. Stalder*, 265 F. Supp. 2d 699 (E.D. La. 2003), and is reproduced in the appendix at A-17-54.

JURISDICTION

On December 21, 2005, the court of appeals denied rehearing *en banc* by an equally divided vote. This Court has jurisdiction under 28 U.S.C. § 1254 to review the judgment of the court of appeals.

CONSTITUTIONAL PROVISIONS AND STATUTES

The following constitutional provisions and statutes involved in this case are set forth in the appendix at A-84-194:

U.S. Const. amend I (A-84).

U.S. Const. amend. XIV (A-84).

28 U.S.C. § 1341 ("Tax Injunction Act") (A-85).

LA. REV. STAT. §§ 47:463.3, 47:463.8-463.9, 47:463.12, 47:463.14, 47:463.22-463.24, 47:463.28, 47:463.30-463.33,

47:463.36-463.37, 47:463.39-463.41, 47:463.43-463.54, 47:463.56-463.64, 47:463.66-463.110 (A-86-181).[1]

STATEMENT OF THE CASE

I. The Viewpoint-Discriminatory Forum.

This case involves the enactment of a series of statutes by which "Louisiana has established numerous license plates that are available for motor vehicles which differ from the standard license plates required under Louisiana law, *see* La. Rev. Stat. § 47:505, in that they contain a message over and above identifying the car to which the license plate is attached." 265 F. Supp. 2d at 711 (A-34). Control over the content of these messages is within the unfettered discretion of the Louisiana Legislature. As the district court wrote:

> The State of Louisiana has created a forum — prestige license plates for privately owned vehicles — that is only open to those organizations the viewpoints of which the State approves. There is no neutrality in the scheme as it stands now; by defendants' own description of the scheme, an organization may only obtain a specialty plate if the Louisiana legislature condones the message so as to adopt it.

265 F. Supp. 2d at 718 (A-49). Moreover, "each prestige license plate issued in Louisiana . . . demonstrates some form of expression: membership in a group or organization; support for an institution; or endorsement of a cause, slogan or belief. Thus, only through legislative enactment of a statute can an organization, group of individuals, or other entity participate in this form of expression by obtaining and using such a license plate." *Id.* at 712 (A-37).

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[1] Several of the special license plate statutes enjoined by the district court have been subsequently repealed and are not included in the appendix.

In order to obtain a prestige license plate, a motorist must apply for the specific plate. In many cases, the motorist must pay a one-time or recurring fee to obtain such a plate, *see*, *e.g.*, A-90 (one-time fee for special Shriner license plate); A-89 (annual fee for special interest vehicle license plates). In some cases, no additional fee is required, *see, e.g.*, A-138 (special license plate for Jaycees). Some prestige plates require the motorist to be a member of an organization related to the plate itself, *see, e.g.*, A-91 (special Farhad Grotto license plate), and some are available to any member of the public willing to pay the requisite monetary charge, *see*, *e.g.*, A-118 ("Choose Life" license plate). In many instances, all of the money collected in payment for a particular plate is directed to an organization related to the message expressed on the plate. *See*, *e.g.*, A-99-100 (special United States Olympic Committee license plate with "donation" collected from motorists to be divided between certain organizations); A-149 (annual "royalty fee" for use of the logo of the Most Worshipful Prince Hall Grand Lodge F & AM Organization collected from motorists and forwarded to that organization).

Included among the license plates approved by the Legislature is a "Choose Life" license plate, La. Rev. Stat. § 47:463.61 (A-121-124), which embodies a slogan of political movement opposed to legal abortion. The statute establishing the "Choose Life" license plate also establishes a fund into which fees collected from motorists who want a "Choose Life" license plate are deposited, and from which grants will be made to non-profit organizations assisting pregnant women who intend to give birth and then give up the child for adoption. Such organizations cannot be "involved in, or associated with counseling for, or referrals to, abortion clinics, providing medical abortion-related procedures, or pro-abortion advertising." La. Rev. Stat. § 47:463.61(F)(2) (A-123-124). The statute also delegates significant authority over the grant-making portion of the

statute to a Choose Life advisory council, to be comprised of sectarian organizations and their designees. La. Rev. Stat. § 47:463.61(E)(1) (A-122).

In contrast, the Legislature has not approved a pro-choice license plate, or indeed any license plate containing other views about abortion. Accordingly, the court of appeals described this case as "concern[ing] whether Louisiana's prestige license plate program facially discriminates against pro-choice views in contravention of the First Amendment." 407 F.3d at 352 (A-1).

II. History of the Proceedings.

This case was originally filed as a challenge to the "Choose Life" license plate statute only, and sought an injunction against implementation of that statute in order to restore viewpoint neutrality in the prestige license plate program. Plaintiffs challenged the statute on two grounds. First, plaintiffs alleged that permitting motorists to express their opposition to abortion but not permitting them to express their support for the right to choose abortion violated the viewpoint neutrality principle of the First Amendment. Second, Plaintiffs alleged that the statute's creation of a "Choose Life" advisory council, comprised of certain specific private organizations that are avowedly sectarian, and which has a significant role in implementing the administration of the "Choose Life" statute, violates the Establishment Clause. The district court granted a preliminary injunction, finding that Plaintiffs had demonstrated a likelihood of success on the first claim only. *See generally Henderson v. Stalder*, 112 F. Supp. 2d 589 (E.D. La. 2000) (granting preliminary injunction).

Respondents ("the State") filed an interlocutory appeal.[2] On appeal, the court of appeals, by a 2-1 vote, held that Plaintiffs lacked standing to challenge the "Choose Life" license plate statute and directed dismissal of the case.[3] *Henderson v. Stalder*, 287 F.3d 374, 382 (5th Cir. 2002). As is relevant here, the court of appeals held that Plaintiffs lacked standing to bring a viewpoint discrimination claim because an injunction against issuance of the "Choose Life" license plate would not redress the viewpoint discrimination of which Plaintiffs complained. Circuit Judge Jones concurred in a separate opinion, responding to the dissenting judge by noting that Plaintiffs might have standing if they challenged "the broad scheme for specialty plates." 287 F.3d at 386 (Jones, J., concurring). Circuit Judge Davis dissented, opining that the district court's injunction would redress the viewpoint discrimination by re-establishing a level playing field among competing viewpoints. *Id.* at 390 (Davis, J., dissenting) ("A person or group excluded from benefits conveyed via an underinclusive statute has standing to challenge the statute on constitutional grounds. This is so

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[2] The opinion of the court of appeals erroneously states that the district court "certified the case for interlocutory appellate review." 407 F.3d at 352 (A-2). In fact, the interlocutory appeal was taken under 28 U.S.C. § 1292(a)(1) (appeals of injunctive orders), not under § 1292(b) (certification where district court finds "a controlling question of law as to which there is substantial ground for difference of opinion"). Far from finding such "a controlling question of law as to which there is substantial ground for difference of opinion," the district court rejected the State's request for a stay of the injunction pending appeal. *Henderson v. Stalder*, No. 00-2237, 2000 WL 1875987 (E.D. La. Dec. 22, 2000) (denying stay).

[3] In addition to addressing the standing of the Plaintiffs named in the notice of appeal to raise viewpoint discrimination and Establishment Clause claims, the court of appeals also rejected the standing of a plaintiff added to the complaint after the State's notice of appeal was filed to raise a First Amendment claim against the restriction on the portion of the "Choose Life" statute establishing grants to non-profit organizations.

even if the effect of striking down the statute is to deny the benefit to the intended group and not extend it to the plaintiffs.").

Several months after the district court dismissed the case in compliance with the mandate of the court of appeals, and after the court of appeals denied rehearing and rehearing *en banc*, the court of appeals *sua sponte* modified its mandate as follows:

> The petition for rehearing is DENIED. The case is remanded to the district court with instructions to dismiss the case for lack of standing unless the plaintiff Keeler amends her petition within a reasonable time to challenge the state's overall policy and practice of issuing specialty license plates.

407 F.3d at 353 (quoting unpublished order) (A-2). In accordance with this revised mandate, Plaintiffs amended the complaint to challenge the state's "overall policy and practice of issuing specialty license plates."

The district court granted Plaintiffs' motion for summary judgment on their claim that Louisiana's special license plate scheme violates the First Amendment's guarantee of freedom of speech because it is a forum for speech that discriminates based on viewpoint. 265 F. Supp. 2d at 719 (A-51). The district court rejected the eleventh-hour argument that it lacked jurisdiction under the Tax Injunction Act, 28 U.S.C. § 1341 ("TIA"), because charges for special license plates are "taxes," reasoning that "Citizens do not impose taxes on themselves and this late [argument] borders on the absurd." 265 F. Supp. 2d at 720 n.12 (A-52). The district court expanded upon its reasoning in denying the state's motion for a stay pending appeal:

> [The court's injunction] has stopped the collection of fees which a person voluntarily agrees to pay for

> the privilege of expressing his views. Indeed, the State in many instances serves as a collection agency for private charities. These fees simply do not sustain the essential flow of revenue to the government; rather, these fees are linked to some regulatory scheme -- if not a charitable scheme. While these statutes have been passed by the legislature, they do not appear to have been passed for primarily revenue producing measures from the constitutional analysis above. In addition, these fees cannot in any manner be construed to be for the benefit for the entire community, rather they are for the benefit of those funds and charities that profit from the sale of these plates. Furthermore, it would be the first time in this Court's memory that people have actively pursued and volunteered to be subjected to a tax as those who seek specialty plates would be seen to be doing if the Court accepted the State's position. Thus, there is no likelihood of success on the merits based on the Tax Injunction Act.

281 F. Supp. 2d at 874 (A-66-67).

The court of appeals reversed. The court began by observing that "the TIA would not deprive federal courts of jurisdiction if (a) the 'fees' charged by the state are not taxes for purposes of TIA, or if (b) *Hibbs v. Winn*, 542 U.S. 88 (2004), can be read to encompass this suit," writing that "reasonable minds can differ on *both* questions." 407 F.3d at 354 (A-6) (parallel citations omitted) (emphasis added). The court concluded, however, that the charges for special license plates are taxes because "A dominant feature of the program, evidenced in over half of the provisions authorizing specialty license plates, is to raise revenue ." *Id.* at 358 (A-13). The court of appeals nowhere concluded, however, that enjoining the charges assessed for special license plates might result in any of the consequences the TIA was designed to protect

against: "state tax administration" would not "be thrown into disarray," taxpayers would not "escape the ordinary procedural requirements imposed by state law," nor would "the collection of revenue under the challenged law . . . be obstructed, with consequent damage to the State's budget, and perhaps a shift to the State of the risk of taxpayer insolvency." *California v. Grace Brethren Church*, 457 U.S. 393, 410 (1982) (citation omitted).

The court of appeals denied a petition for rehearing *en banc* by an equally divided vote, with eight Circuit Judges voting to grant rehearing. The dissenting judges joined an opinion written by Judge Davis, which took the view that the court's decision applied the distinction between a tax under the TIA and a fee falling outside the TIA mechanistically and with an absurd result.

REASONS FOR GRANTING THE WRIT

The decision of the court of appeals extends the jurisdictional bar of the Tax Injunction Act in a sweeping manner that risks eliminating federal court jurisdiction in a wide range of constitutional cases. First, the decision of the court of appeals is in direct conflict with the decision of the United States Court of Appeals for the Sixth Circuit in *ACLU of Tennessee v. Bredesen*, --- F.3d ---, No. 04-6393, 2006 WL 664372 (6th Cir. Mar. 17, 2006), in which that court held that the statutory payment required by Tennessee to obtain a "Choose Life" license plate was not a "tax" under the TIA because the payment "is merely a contract price." *Id* at *4.[4] The Sixth Circuit expressly rejected the Fifth Circuit's reasoning in *Henderson*, instead embracing the views of the eight Circuit Judges who dissented from rehearing *en banc*

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[4] Like the Louisiana "Choose Life" license plate statute considered by the court of appeals for the Fifth Circuit in the instant case, the Tennessee statute at issue in *Bredesen* required an additional fee (in Tennessee, $35.00), half of which goes to organizations opposed to abortion. *Id.* at *1.

below. *Id.* In addition to this direct conflict, the opinion of the Fifth Circuit is also at odds with the Fourth Circuit's opinion in *Planned Parenthood of South Carolina v. Rose*, 361 F.3d 786 (4th Cir. 2004), *cert. denied*, 543 U.S. 1119 (2005), which affirmed an injunction against South Carolina's "Choose Life" license plate statute without even pausing to address whether the TIA was a jurisdictional impediment.[5] These conflicts between the exercise of federal jurisdiction by two court of appeals (the Sixth and Fourth Circuits) over an important First Amendment issue, and the rejection of federal jurisdiction by another (the Fifth) in order to avoid confronting the same First Amendment issue, should be resolved by the Court. *See* Sup. Ct. R. 10(a).

Second, the court of appeals ignored the Congressional intent in enacting the TIA, incorporated into and recognized in *Hibbs v. Winn*, 542 U.S. 88 (2004), and many other of this Court's decisions, *viz.*, to prevent state taxpayers from using the federal courts "to stop the tax collector from initiating collection proceedings." *Id.* at 104 (quoting *Jefferson County v. Acker*, 527 U.S. 423, 435 (1999)). Instead, the court of appeals applied the TIA to bar Plaintiffs' suit to enjoin the operation by Louisiana of a viewpoint-discriminatory forum on its license plates, which incidentally involves the collection of fees collected from those who want to express certain state-approved messages on their license plates. The conflict between the Court's decision in *Hibbs*, as well as its prior opinions uniformly applying the TIA only to suits by

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[5] Indeed, several challenges to "Choose Life" license plates have been brought in federal court, reflecting the enactment of such statutes in 12 states and the concomitant rejection of any other viewpoints about abortion for inclusion in state license plate programs. For example, in reliance upon the instant decision of the court of appeals, a federal district court in Oklahoma has dismissed on TIA grounds a First Amendment challenge to that state's "Choose Life" license plate. *Hill v. Kemp*, No. 04-CV-0028, slip. op. (N.D. Okla. Aug. 16, 2005), *appeal pending*, No. 05-5160 (10th Cir. docketed Sept. 15, 2005).

taxpayers seeking to avoid payment of state taxes, merits granting the petition. *See* Sup. Ct. R. 10(c).

Third, the court of appeals vastly broadened the scope of what constitutes a "tax" under the TIA by finding that small payments made by individuals who choose to use the prestige license plates forum to express their own views are "taxes." This is an unprecedented expansion of the TIA, which has heretofore been understood only "to stop taxpayers, with the aid of a federal injunction, from withholding large [tax] sums, thereby disrupting state government finances." *Hibbs*, 542 U.S. at 104. *See Henderson*, 434 F.3d at 357 (Higginbotham, J., dissenting) (decrying court's "'expansive reading' of 'tax'" under the TIA as an "aggressive run with the statute" which "create[s] a side door for federal judges determined to avoid a constitutional question") (A-83).

Under the expanded interpretation of the TIA by the court of appeals, nearly any unconstitutional content or viewpoint discrimination implemented by a state could be insulated from direct federal court review by including the "feature" of "taxing" those with messages with privileged content or viewpoint. *See Henderson*, 407 F.3d at 352 ("The program diverts excess charges over handling and ordinary registration fees for the plates to organizations endorsed by the legislature. *Because of this feature of the program*, we conclude that we lack jurisdiction over the case because of the Tax Injunction Act.") (emphasis added) (A-1). For example, a state could enact a statute allowing only those expressing approval of state policies and sitting state officials to speak in public (or even private) places, and then insulate that statute from federal court review by including a "feature" in its censorship: charging those who wished to speak approvingly of state policies and officials a nominal fee that would go "to organizations endorsed by the legislature." *Id.* Because whether such a voluntary entry fee into a state-controlled forum is a "tax" that triggers the TIA is an important question of federal law with far-reaching

implications for the traditional role of the federal district courts in adjudicating federal constitutional rights, this Court should grant the petition to settle whether such a voluntary entry fee is a "tax." *See* Sup Ct. R. 10(c).

I. The Decision of the Court of Appeals Conflicts with the Decision of the United States Court of Appeals for the Sixth Circuit Holding that the Tax Injunction Act Is Inapplicable to a Challenge to a "Choose Life" License Plate.

The decision of the court of appeals below presents a direct conflict with the recent decision of the court of appeals for the Sixth Circuit in *Bredesen*, 2006 WL 664372 (6th Cir. Mar. 17, 2006). In *Bredesen*, the Sixth Circuit held that the TIA does not deprive a federal district court of jurisdiction over a First Amendment challenge to Tennessee's "Choose Life" license plate statute because "Tennessee's sale of specialty plates creates contractual debts to pay but imposes no tax." *Id.* at *3. Relying in part upon this Court's decision in *New Jersey v. Anderson*, 203 U.S. 483, 492 (1906); *Meriwether v. Garrett*, 102 U.S. 472, 513 (1880); and *Fla. Cent. & Peninsular R.R. Co. v. Reynolds*, 183 U.S. 471, 475 (1902), the Sixth Circuit reasoned that "Ordinary purchase payments are not taxes under the TIA, and neither is the extra payment for a specialty license plate." *Bredesen*, at *2. Expressly rejecting the tax-vs.-fee analysis undertaken by the Fifth Circuit below, the Sixth Circuit held that the essential first step in determining whether a payment is a "tax" under the TIA is whether the payment is *compelled*. If the payment is *not* compelled, "The test for determining which compelled exactions are taxes and which are fees cannot logically be used to determine whether a payment is a compelled exaction in the first place." *Id.* at *4. Instead, the Sixth Circuit acknowledged its "substantial agreement" with the opinion of Judge Davis below, joined by seven other Circuit Judges, in dissent from denial of rehearing *en banc*. *Id.* The opinion of the Fifth Circuit thus presents an unusually sharp conflict

with an opinion of the Sixth Circuit on an important question of federal jurisdiction and the power of federal district courts to address important constitutional questions. *See also Bredesen* at *10 n.1 (Martin, J., concurring in part & dissenting in part) ("Perhaps of some interest, when this opinion is filed, at least three circuits (4th, 5th, and 6th) will have spoken on the issue [of "Choose Life" license plates], reaching at least three different conclusions, via at least sixteen separate opinions.").

The opinion of the Fifth Circuit is also at odds with that of the Fourth Circuit in *Planned Parenthood of South Carolina v. Rose*, 361 F.3d 786 (4th Cir. 2004). There, the court affirmed a district court decision enjoining South Carolina's "Choose Life" special license plate. The Fourth Circuit exercised jurisdiction over the exact issue over which the Fifth Circuit below held that the district court lacked jurisdiction due to the TIA. Indeed, the Fourth Circuit expressly characterized the monetary payment required under the South Carolina statute as a fee rather than a tax. *Id.* at 788 ("Sale of the Choose Life plate is expected to generate additional revenue for the State; the fee for the special plate is seventy dollars every two years in addition to the regular fee."). *See also Sons of Confederate Veterans, Inc. v. Commissioner, Va. Dept. of Motor Vehicles*, 288 F.3d 610, 619 (4th Cir. 2002) (exercising jurisdiction over challenge to statute forbidding display of organization's logo on special license plate, and describing charge for license plate as "fees collected through the special plate program" which have a "revenue-producing aim"); *id.* at 620 n.8 ("To obtain a special plate, the government requires a vehicle owner to pay a fee in excess of that required to obtain an ordinary Virginia license plate."); *Women's Resource Network v. Gourley*, 305 F. Supp. 2d. 1145 (E.D. Ca. 2004) (TIA does not bar claim that California special license plate scheme violates First Amendment).

This Court should grant certiorari to resolve the conflict between the Fifth and Sixth Circuits about the scope of the TIA. As set forth in greater detail in Point III below, this is an important question of federal law because the holding of the Fifth Circuit will enable states to avoid direct federal court review of unconstitutional statutes by attaching a monetary payment to those statutes.

II. The Decision of the Court of Appeals Conflicts with this Court's Decision in *Hibbs v. Winn*, 542 U.S. 88 (2004), Because It Construes the Tax Injunction Act to Bar Plaintiffs' Suit, Even Though They Do Not Contest Their Own State Tax Liability.

In *Hibbs v. Winn*, 542 U.S. 88 (2004), this Court described the limited scope of the TIA, noting that "[t]hird-party suits not seeking to stop the collection (or contest the validity) of a tax *imposed on plaintiff*. . . were outside Congress' purview." *Id.* at 104 (citations omitted). Because the plaintiffs here do not seek to stop the collection or contest the validity of any taxes imposed on the plaintiffs, this case is "outside Congress' purview" and federal court jurisdiction is not barred by the TIA.[6] *See Bredesen*, at *2 n.1 ("Plaintiffs in this case are of course not seeking to avoid paying for a 'Choose Life' license plate, and it is therefore at least questionable [under *Hibbs*] whether the TIA would apply even if the payment for the license plate were a 'tax.'").

Hibbs considered the scope of the Tax Injunction Act in an Establishment Clause challenge to an Arizona program that provided tax credits for payments of tuition to private schools. *Hibbs* held that federal court jurisdiction is not barred in such a suit. In reaching this holding, the Court

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[6] In fact, the plaintiffs do not even contest the monetary fees charged for participation in the specialty license plate program. Instead, the plaintiffs challenge the program itself, in which the fees are incidental.

considered the history and purpose of the Tax Injunction Act, finding that:

> [I]n enacting the TIA, Congress trained its attention *on taxpayers who sought to avoid paying their tax bill* by pursuing a challenge route other than the one specified by the taxing authority. Nowhere does the legislative history announce a sweeping congressional direction to prevent "federal-court interference with all aspects of state tax administration."

Hibbs, 542 U.S. at 104-05 (quoting Brief of Petitioners) (emphasis added).

In reliance upon this Congressional intent and the cases this Court has decided involving the TIA, this Court summarized its TIA precedents as follows:

> In sum, this Court has interpreted and applied the TIA *only* in cases Congress wrote the Act to address, *i.e.*, cases in which state taxpayers seek federal-court orders enabling them to avoid paying state taxes.

Id. at 107 (first emphasis added). Thus, when considering whether the TIA's jurisdictional bar was removed because there was no adequate state remedy, this Court has looked at whether state courts provide a remedy for *taxpayers*. *Hibbs*, 542 U.S. at 107 ("The [state court] remedy inspected in our decisions was not one designed for the universe of plaintiffs who sue the State. Rather, it was a remedy tailor-made for taxpayers.").

The court of appeals, ignoring this Court's precedent, applied the TIA to bar federal district court jurisdiction over Plaintiffs' suit, even though no Plaintiff seeks a federal-court order "enabling [her] to avoid paying state taxes." Simply put, Plaintiffs' lawsuit is not an effort "to test state tax assessments," *California v. Grace Brethren Church*, 457

U.S. 393, 410 (1982) (quoting *Fair Assessment in Real Estate Ass'n, Inc. v. McNary*, 454 U.S. 100, 108-109 n.6 (1981)), that would be encompassed within the TIA's jurisdictional bar.

The holding of the court of appeals extending the TIA to Plaintiffs' lawsuit therefore conflicts both with this Court's uniform and consistent application of the TIA to actions by state taxpayers to avoid state tax liability and with the Congressional intent in enacting the TIA as well.

III. The Decision of the Court of Appeals Presents An Important Question Concerning the Definition of "Tax" Under the Tax Injunction Act Which Has Not, But Should Be, Decided By this Court.

As the dissenting opinion of Judge Davis, joined by seven other Circuit Judges, observes, the payments made by individuals in order to obtain Louisiana prestige license plates bear none of the hallmarks of a tax:

> First, the payment in question does not "sustain the essential flow of revenue to the government" because in most cases the funds collected are not retained by the state. Second, the charge is not "imposed" by the legislature; because it is entirely optional and voluntary on the part of Louisiana citizens electing to pay the extra charge for a specialty plate. Third, the payment does not provide a "benefit for the entire community" because the fee from most specialty license plates is dedicated entirely to the specific organization or cause identified on the selected license plate.

Henderson, 434 F.3d at 356 (Davis, J., dissenting) (A-81).

In holding that the small payments involved in the Louisiana prestige license plate scheme are "taxes," the court of appeals not only rejected this sound reasoning, but transformed the TIA into something pernicious: a means by

which states can insulate many unconstitutional statutes from direct federal court review by including some form of monetary payment in them. For example, a state could allow parade permits only for organizations with favored viewpoints and simultaneously curtail federal court review by requiring small monetary permit fees. Under the court of appeals' theory, such fees would be "taxes" protected from direct federal review by the TIA's jurisdictional bar so long as the permit fees made their way into the state treasury.[7] This distorts the purpose of the TIA, which is to protect state taxation systems from being "thrown into disarray" by federal court interference, *Grace Brethren*, 457 U.S. at 410 (quoting *Fair Assessment in Real Estate Ass'n, Inc. v. McNary*, 454 U.S. 100, 108-109 n.6 (1981)), not to provide states with a ready tool by which to defeat federal court jurisdiction over important federal questions like compliance with the First Amendment's requirement of viewpoint neutrality.[8]

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[7] Moreover, it is readily apparent that such parade permit fees -- like the charges for Louisiana prestige license plates -- are hardly the sort of monetary assessments that "state taxpayers" would sue to avoid paying. On the contrary: because these charges are eminently voluntary, and are paid only when someone wishes to express a preferred viewpoint, it is difficult to imagine that someone paying to obtain, for example, a "Choose Life" license plate would sue to prevent collection of the fee at all, let alone on federal law grounds. One useful indicator of whether a payment to the state is a "tax" is surely whether anyone asked to pay it would ever resist payment.

[8] The court of appeals also improperly gave no weight to the characterization of the charges for special license plates within Louisiana's own legal system. *See Henderson*, 407 F.3d at 356 ("what is a 'tax' for purposes of the TIA is a question of federal law on which a state's legislative label has *no bearing*.") (emphasis added) (A-9). As the district court observed,

> the Louisiana Constitution provides, "The levy of a new tax, an increase in an existing tax, or a repeal of an existing tax exemption shall require the enactment of a law by two-thirds

In addition, the holding of the court of appeals ignores the essence of Plaintiffs' viewpoint discrimination claim. Plaintiffs would challenge the prestige license plate forum as viewpoint discriminatory even if the prestige license plates were available at no additional charge. Indeed, Plaintiffs would have no objection to paying a fair price for a pro-choice license plate if only Louisiana would allow expression of that viewpoint.

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of the elected members of each house of the legislature." La. Const. art. VII, § 2. There is no indication that any of these measures had to be enacted by super-majorities. Furthermore, under the Constitution, bills concerning "the levying or authorizing of a new tax, increasing an existing tax, legislating with regard to tax exemption, exclusions, deductions, reductions, repeal or credits" must occur during even-numbered years. La. Const. art. III, § 2(A)(3). A general review of these statutes indicates they were not passed in those years.

281 F. Supp. 2d at 873 (A-65). *Cf. Hibbs*, 542 U.S. at 125-26 (Kennedy, J., dissenting) (treating the question of what is interference with a state tax system as determined in part by state law).

CONCLUSION

For the foregoing reasons, the Petition should be granted.

Respectfully submitted,

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Dated March 20, 2006.

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OFFICE OF THE CLERK

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

DOREEN KEELER; and
PLANNED PARENTHOOD OF LOUISIANA, INC.,

Petitioners,

— v. —

RICHARD L. STALDER, Secretary, Department of Public Safety and Corrections; and JOHN KENNEDY, State Treasurer,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI

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Table of Contents

Appendix Page

Henderson v. Stalder,
407 F.3d 351 (5th Cir. 2005) A-1

Henderson v. Stalder,
265 F.Supp.2d 699 (E.D.La. 2003) A-17

Henderson v. Stalder,
281 F.Supp.2d 866 (E.D.La. 2003) A-55

Henderson v. Stalder, 434 F.3d 352 (5th Cir. 2005) A-75

U.S. Const. amend. I A-84

U.S. Const. amend. XIV A-84

28 U.S.C. § 1341 ("Tax Injunction Act") A-85

LA. REV. STAT. §§ 47:463.3, 47:463.8-463.9, 47:463.12, 47:463.14, 47:463.22-463.24, 47:463.28, 47:463.30-463.33, 47:463.36-463.37, 47:463.39-463.41, 47:463.43-463.54, 47:463.56-463.64, 47:463.66-463.110 ..... A-86

United States Court of Appeals,
For The Fifth Circuit.

No. 03-30699.

Russell J. HENDERSON; et al.,
Plaintiffs,

Doreen Keeler; Planned Parenthood of Louisiana, Inc.,
Plaintiffs-Appellees,

v.

Richard STALDER, etc.; et al.,
Defendants,

Richard Stalder, Secretary, Department of Public Safety and Corrections; John Kennedy, State Treasurer,
Defendants-Appellants.

April 13, 2005.

Appeal from the United States District Court
for the Eastern District of Louisiana
New Orleans Division No. 00-CV-2237-K

Before JOLLY, JONES and PRADO, Circuit Judges.

EDITH H. JONES, Circuit Judge:

This appeal concerns whether Louisiana's prestige license plate program facially discriminates against pro-choice views in contravention of the First Amendment. The program diverts excess charges over handling and ordinary registration fees for the plates to organizations endorsed by the

legislature. Because of this feature of the program, we conclude that we lack jurisdiction over the case because of the Tax Injunction Act, 28 U.S.C. § 1341.

I. BACKGROUND

A. The First Appeal

This case is on appeal for the second time. The plaintiffs originally filed suit seeking to have La.Rev.Stat. Ann. § 47:463.61, which authorized the adoption of a "Choose Life" prestige license plate, declared unconstitutional. The district court found Louisiana's prestige license plate program created a forum for speech that was not viewpoint neutral, granted both declaratory and injunctive relief, and certified the case for interlocutory appellate review. *See Henderson v. Stalder* ("*Henderson I*"), 112 F.Supp.2d 589 (E.D.La.2000).

On appeal, this court, sua sponte, concluded that the plaintiffs lacked standing. *See Henderson v. Stalder,* 287 F.3d 374 (5th Cir.2002). *See also, Women's Emergency Network v. Bush,* 323 F.3d 937 (11th Cir.2003) (rejecting challenge to Florida "Choose Life" plate for lack of standing). The court thus "REVERSED, VACATED, and REMANDED" the case "for an entry of dismissal." *Henderson,* 287 F.3d at 382. On petition for rehearing, however, the court slightly amended its decision by issuing an order, which reads in part: "The petition for rehearing is DENIED. The case is remanded to the district court with instructions to dismiss the case for lack of standing unless *the plaintiff Keeler* amends her petition within a reasonable time to challenge the state's overall policy and practice of issuing specialty license plates." *Henderson v. Stalder,* 57 Fed. Appx. 213, 2003 WL 151183 (5th Cir. Jan.9, 2003) (unpublished order) (emphasis added). The district court vacated the previous judgment and allowed Keeler to amend her complaint.

B. Remand

The Third Amended Complaint named individuals Henderson, Keeler, Loewy, and LaMothe, and organizations (National Council of Jewish Women and Planned Parenthood of Louisiana) as plaintiffs, and each attempted to establish standing. *See Henderson v. Stalder* ("*Henderson II*"), 265 F.Supp.2d 699, 707 (E.D.La.2003). Importantly, the Third Amended Complaint "raise[d] a First Amendment facial challenge to the entire overall policy and practice under which Louisiana makes available certain specially designed license plates for the expression of certain views by Louisiana vehicle owners." *Id.* The Third Amended Complaint also raised new Establishment Clause claims.

The defendants moved to dismiss on several grounds, and the plaintiffs responded with a motion for partial summary judgment contesting the constitutionality of the license plate program.

The district court first determined that the Fifth Circuit's mandate did not prevent each of the plaintiffs from attempting to reassert standing. *See id.* at 708-09. Nevertheless, the district court dismissed all the plaintiffs, save Keeler and PPL, for lack of standing based on the reasoning the Fifth Circuit provided. *See id.* at 709-10.[1] As to Keeler, the court concluded that she sufficiently amended her complaint to present a viable facial challenge to the overall program. The district court also concluded that the amendments to Keeler's complaint cured the redressability problems that were fatal to PPL's funding claim. Furthermore, the district court dispatched the defendants' argument that the Tax Injunction Act barred the challenge. *See id.* at 720 n. 12.

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[1] Plaintiffs Henderson, Loewy, LaMotte and the NCJW have not appealed the district court's dismissal of their claims.

On the merits of Keeler's First Amendment claim, the court again accepted Keeler's argument that the license plate program created a "forum" that permitted only some groups to express their chosen viewpoint. Relying on the Fourth Circuit's decision in *Sons of Confederate Veterans, Inc. v. Commissioner, Virginia Dept. of Motor Vehicles* ("*SCV*"), 288 F.3d 610 (4th Cir.2002), *reh'g en banc denied,* 305 F.3d 241 (4th Cir.2002), the district court held that Louisiana's prestige license plate program effectuated unconstitutional viewpoint discrimination and enjoined its enforcement.[2] The court refused to stay the enforcement of its ruling. This appeal ensued.

II. STANDARD OF REVIEW

We review the district court's grant of summary judgment de novo, applying the same standards as did the district court. *Hodges v. Delta Airlines, Inc.,* 44 F.3d 334, 335 (5th Cir.1995) (en banc).

III. DISCUSSION

The defendants raise three principal arguments on appeal: (1) the district court exceeded the scope of its mandate by allowing PPL to amend its claim; (2) the Tax Injunction Act bars the suit in its entirety; and (3) the prestige license plate program does not violate the First Amendment. For reasons that will be obvious, we do not reach the merits of the case.

A. PPL's Standing

The defendants rightly contend that the district court exceeded the scope of this court's mandate by permitting PPL to seek to file a complaint on remand. "[T]he mandate rule compels compliance on remand with the dictates of a

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[2] PPL's funding and Establishment Clause claims were therefore rendered moot. *See Henderson II,* 265 F.Supp.2d at 719.

superior court and forecloses relitigation of issues expressly or impliedly decided by the appellate court." *United States v. Lee,* 358 F.3d 315, 321 (5th Cir.2004) (citing *United States v. Bell,* 988 F.2d 247, 251 (1st Cir.1993)).

The district court failed to abide by this rule. "Where, as here, further proceedings in the district court are specified in the mandate of the Court of Appeals, the district court is limited to holding such as are directed." *Crowe v. Smith,* 261 F.3d 558, 562 (5th Cir.2001) (citations and quotations omitted). This court's order permitting Keeler to amend her complaint must be read in light of the original decision in which the case was remanded *only* for "entry of dismissal." *Henderson,* 287 F.3d at 382. This court narrowly altered that ruling on rehearing to permit *Keeler* to add a facial challenge to the entire program--a claim that was absent from her original complaint. This narrow amendment to the *Henderson* ruling was not an invitation for Keeler to add new claims or rationales for PPL's standing. The appellate court might have explored other avenues by which PPL could establish standing, and might have included remand instructions to that end, but we did neither. Judicial economy considerations--the district court's justification for its decision--are insufficient to overcome the appellate court's express ruling. PPL is therefore dismissed from the suit.

B. Tax Injunction Act

The defendants next contend that the Tax Injunction Act ("TIA") bars Keeler's First Amendment challenge to the prestige license plate program. The TIA prohibits a federal court from "enjoining, suspending or restraining the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such state." 28 U.S.C. § 1341. Keeler's goal in this suit, and the remedy ordered by the district court, in fact enjoined the state's collection of revenue for its entire

specialty license plate program. Nevertheless, the TIA would not deprive federal courts of jurisdiction if (a) the "fees" charged by the state are not taxes for purposes of TIA, or if (b) *Hibbs v. Winn,* 542 U.S. 88, 124 S.Ct. 2276, 159 L.Ed.2d 172 (2004) can be read to encompass this suit. Although reasonable minds can differ on both questions, we are persuaded that the additional amounts that the state collects for specialty plates--above handling and ordinary vehicle registration fees--are indeed taxes rather than regulatory fees. Further, *Hibbs*'s interpretation of the TIA does not contemplate or authorize a suit whose object is to diminish the flow of state revenues. The TIA deprives the federal courts of jurisdiction over Keeler's claim.

A review of the program's operation will illuminate further discussion. Under Louisiana Law, the Secretary of the Department of Public Safety and Corrections ("Secretary" and "DPS") is charged with the task of issuing license plates for private passenger vehicles. *See* La.Rev.Stat. Ann. § 47:463(A)(3)(a). This legislation also permits the Secretary to issue "special prestige license plates" if the Legislature so authorizes and certain administrative requirements are satisfied. *Id.* A few rudimentary administrative requirements apply to all prestige plates.[3]

Other varying preconditions are included in the specific legislation authorizing the individual prestige license plates. For instance, there are monetary differences. More than half of the specialty plates are distributed in exchange for

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[3] *See, e.g.,* La.Rev.Stat. Ann. § 47:463(A)(3)(a) ("All prestige plates issued after August 15, 1999 shall include a handling charge of three dollars and fifty cents to offset the administrative costs of the department for the issuance of such plates."); La.Rev.Stat. Ann. § 47:463(A)(3)(b) ("No prestige plate shall be established after January 1, 2002, until the department has received a minimum of one thousand applications for such plate.").

additional charges above the handling charge, and in many cases, like that of the "Choose Life" plates, the charges so collected are distributed to organizations as determined by the legislature. *See Henderson I,* 112 F.Supp.2d at 592 (explaining that proceeds from "Choose Life" plates will be distributed to organizations that counsel women to place their children up for adoption). When such an additional charge is required, however, the amount varies from statute to statute. *See, e.g., id.* at § 47:463.8 (no fee); § 47:463.14 ($25 fee); § 47:463.20 (same fee as "the regular motor vehicle registration license fee"). Moreover, the extra charge may recur annually or may be a one-time charge. *See, e.g., id.* at § 47:463.8 (one-time charge); § 47:463.31 (annual charge). Second, the moniker associated with the extra fee also varies. *See, e.g., id.* at § 47:463.33 ("fee"); § 47:463.31 ("royalty"); § 47:463.57 ("donation"). Finally, the allocation of the proceeds differs from statute to statute. *See, e.g., id.* at § 47:463.8 (funds deposited in state treasury); § 47:463.43 (funds directed to Louisiana Environmental Education Fund); § 47:463.89 (funds directed to New Orleans Recreation Department).

Other distinctions less critical to this case exist among the statutes authorizing specialty plates. The statutes differ in the measure of editorial and aesthetic discretion afforded to the recipients and the Secretary.[4] Some, but not all, of the

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[4] Louisiana appears to be deliberate about the measure of creative discretion it delegates to the identified groups and how much it retains. The legislature specifically adopted the "Choose Life" statement, allowing only aesthetic decisions to the Choose Life Council. To well-established organizations, the Legislature entrusts the design of the license plate, subject to compliance with certain statutory standards. *See, e.g.,* La.Rev.Stat. Ann. § 47:463.71 ("The license plate shall be of a color and design selected by the Boy Scouts of America, provided that it is in compliance with R.S. 47:463(A)(3).") In other instances, the state imposes more restrictive instructions. *See, e.g., id.* at § 47:463.75 ("In addition, the plate shall bear the inscription 'SONS OF CONFEDERATE

statutes require that a minimum number of purchasers apply for the specialty plates prior to their production. *See, e.g., id.* at § 47:463.13 (no minimum applicant requirement for special plates honoring Congressional Medal of Honor recipients); § 47:463.58 (conditioning the Life Center Full Gospel Baptist Cathedral plate on a minimum of one thousand applicants); § 47:463.61 (conditioning the "Choose Life" plate on a minimum of one hundred applicants). Finally, beyond administrative and monetary distinctions, the statutes mandate different eligibility criteria to obtain specialty plates.[5]

From Keeler's standpoint, the first basis for sustaining federal jurisdiction is that the additional charges Louisiana citizens incur for specialty plates, above the handling charges and ordinary vehicle registration taxes, are fees, not taxes, hence the program is not covered by the TIA. The district court so held, in part because the state statutes characterize

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VETERANS' and the logo of the Sons of Confederate Veterans. The department shall approve any logo, symbol, or design before such plate is produced."). As for plates recognizing diffuse interests, Louisiana retains all content-based discretion. *See, e.g., id.* at § 47:463.112 ("The secretary shall design the plate [recognizing foster and adoptive parenting].").

[5] In some instances, eligibility is based on membership in a particular association or participation in a seminal event. *See, e.g., id.* at § 47:463.7 (former prisoners of war of World War I, World War II, the Korean Conflict, and the Vietnamese Conflict); § 47:463.13 (U.S. Reserve Forces); § 47:463.20 (Pearl Harbor survivors); § 47:463.22 (Shriners); § 47:463.32 (Knights of Columbus). Other plates express support for a particular institution or entity and therefore do not require membership in a particular organization. *See, e.g., id.* at § 47.463.67 ("I Support River Region Cancer Center"); § 47:463.110 ("Support 4-H Youth Development"). Still other plates allow citizens to express their support for a certain cause or point of view. *See, e.g., id.* at § 47:463.40 ("Think Safe Kids"); § 47:463.60 ("Animal Friendly"); § 463.61 ("Choose Life"); § 47:463.69 ("Don't Litter Louisiana"); § 47:463.95 ("Unlocking Autism").

the additional charges for the specialty plates as fees. On the contrary, what is a "tax" for purposes of the TIA is a question of federal law on which a state's legislative label has no bearing. *Home Builders Ass'n of Miss. Inc. v. City of Madison, Miss.*, 143 F.3d 1006, 1010 n. 10 (5th Cir.1998). While this court has acknowledged that "distinguishing a tax from a fee is often a difficult task," *id.* at 1011, Judge Wisdom distilled the following "workable distinctions" from the caselaw:

> The classic tax sustains the essential flow of revenue to the government, while the classic fee is linked to some regulatory scheme. The classic tax is imposed by a state or municipal legislature, while the classic fee is imposed by an agency upon those it regulates. The classic tax is designed to provide a benefit for the entire community, while the classic fee is designed to raise money to help defray an agency's regulatory expenses.

Home Builders, id. (omitting internal citations). This court added that a broad construction of "tax" is necessary to honor Congress's goals in promulgating the TIA, including that of preventing federally-based delays in the collection of public revenues by state and local governments. *Id.* (citing *Tramel v. Schrader*, 505 F.2d 1310, 1315-16 (5th Cir.1975)).

A few brief examples flesh out the distinction between a TIA-covered tax and regulatory fees. In *Hager v. City of West Peoria*, 84 F.3d 865 (7th Cir.1996), the Seventh Circuit held that graduated fees on the weight of truckloads had been legislated to discourage heavy trucks from using a particular road and thus "were passed to control certain activities, not to raise revenue." 84 F.3d at 871. This court has, on the other hand, routinely characterized local improvement assessments imposed on a selected class of business as taxes, not fees, in

line with the understanding that a "tax" "embraces any extraction of property from a private person by a sovereign for its use." *Tramel,* 505 F.2d at 1315. *Home Builders* reaffirmed this characterization of an impact fee ordinance, which was passed to enhance the provision of municipal services in a rapidly growing city, deeming it a tax in light of the broad public purpose to be served by the funds collected under it. 143 F.3d at 1011-12.

Acknowledging this tax/fee distinction, Keeler relies on *Neinast v. Texas,* 217 F.3d 275 (5th Cir.2000), in which this court found no TIA bar to adjudicating handicapped persons' challenge to a Texas statutory fee for obtaining handicapped parking placards. Revenue obtained from the fee was paid into the state highway fund for the purpose of defraying the cost of the handicapped placards. 217 F.3d at 278. The court characterized fees, exempt from the TIA, as charges imposed "(1) by an agency, not the legislature; (2) upon those it regulates, not the community as a whole; and (3) for the purpose of defraying regulatory costs, not simply for general revenue-raising purposes." *Id.* While the first two criteria tugged in opposite directions, the court held that the fee was tagged "for the benefit of the program itself," *i.e.,* to reimburse the costs of the placards. This fact served to distinguish *Home Builders.* Further, responding to an argument of the state, the court noted that "the question is not where the money is deposited [in general revenue or segregated accounts], but the purpose of the assessment." *Id.*

Keeler advances three reasons, allegedly rooted in *Neinast,* to support her contention that the specialty plate program involves the payment of fees. First, she contends that because the program is administered by the Motor Vehicle Unit of the Department of Public Safety and Corrections, the fees are "charged" by a regulatory agency. Second, the charges are imposed "only upon those that the scheme regulates," rather than upon the community as a

whole or even the entire vehicle-owning community. Third, she asserts that the additional specialty plate fees are not simply imposed for revenue-raising purposes but are earmarked for very specific organizations and thus "defray the cost of moneys expended to these special programs, which are not intended for the benefit of the entire community." These arguments are either logically attenuated from the facts or inconsistent with our governing caselaw.

First, the fees for Louisiana specialty plates are directly set by the legislature, even though they are collected by a state agency's motor vehicle unit. *Neinast* concluded that an analogous feature of the handicapped parking fees suggested a TIA-covered tax.

Second, the fact that specialty plate charges are paid by some, though not all, purchasers, much less all license plate purchasers, is suggestive of *Neinast,* which held that the charge for handicapped placards represented in this respect a fee rather than a tax. On the other hand, this court has held that special assessments imposed on a limited subgroup of the population, were TIA "taxes" because their revenue was used for community improvements. *See Home Builders; Tramel.* Thus, this factor, whether the charges are imposed "only upon those that the scheme regulates," is ultimately interrelated with the purpose of the charge assessed against a limited subgroup.

Finally, Keeler's argument that specialty plate fees cannot be taxes because they do not serve the general community welfare, inasmuch as they are earmarked for special recipient organizations, is unpersuasive. The fees in question exceed the ordinary motor vehicle registration fees (which are based on a vehicle's value) and an additional handling charge; they are not tied to vehicle regulation as such. As *Neinast* noted, the question is not where the money is deposited, but the purpose of the assessment. The Louisiana legislature decreed

that the excess charges would be used for a number of purposes, ranging from (but not limited to) park development to university education to adoption support. None of these purposes is "regulatory" as to the specialty plate purchasers. Keeler's view of the public benefit served by these expenditures may differ from that of the Louisiana legislature, but it does not transform the additional charges for specialty plates into fees designated for a "regulatory" purpose.

The district court emphasized two features of the specialty plate program in concluding that the additional charges (above the handling fee and registration tax) are fees rather than taxes. The additional charges, it pointed out, are paid *voluntarily* by vehicle owners, whereas taxes are normally considered involuntary charges. Further, the charges are not imposed uniformly even among purchasers of specialty plates. The court inferred from the inconsistency of the policy that the legislature was benefiting only a few groups rather than the community at large. Both points merit discussion.

The voluntariness of the vehicle owner's payment constitutes, in our view, at most a superficial distinction for purposes of the TIA. Voluntariness is an overinclusive term in this context: Any party who pays special assessments to the government does so "voluntarily" in order to engage in particular activity, whether that activity is homebuilding, engaging in a regulated industry, or obtaining permission to park in handicapped spots. The same can be said of purchasing a "Choose Life" or "Knights of Columbus" or any other specialty license plate logo. A taxpayer "voluntarily" pays the state's ordinary vehicle registration tax for the privilege of legally owning a car, yet that charge is indisputably a tax. It is thus not the taxpayer's motivation but the government's purpose in exacting the charge (here, the additional amount above the handling cost and ordinary

vehicle registration tax) that distinguishes taxes from non-TIA-covered regulatory fees.

The variability of the additional charges among purchasers of specialty plates caused the district court to conclude that in many instances, the state is acting as a "collection agency for private charities." 281 F.Supp.2d at 874. The court deduced that such variable charges cannot "benefit the entire community" because they "are linked to some regulatory scheme--if not a charitable scheme." *Id.* While these features of the specialty plate program--the variations in charges and use of the funds collected--set it apart from more traditional funding mechanisms, however, they do not render the charges equivalent to regulatory fees outside the TIA. The additional charges "regulate" nothing; they defray no costs of the program itself, as those costs are embodied in the separate, minimal handling fee. That the charges vary among different specialty plates and are distributed in different ways constitute, in our view, legitimate exercises of legislative line-drawing. Moreover, the distribution of some of the funds to private sources simply indicates the legislature's determination to "outsource" certain activities. A dominant feature of the program, evidenced in over half of the provisions authorizing specialty license plates, is to raise revenue. Given the TIA's broad purpose to prevent federal courts from interfering with challenges to state and local revenue-raising measures, and the correspondingly narrow and focused exception that has been carved out for regulatory fees that defray the costs of a particular regulatory regime, we are unwilling to mischaracterize the Louisiana legislature's appropriations measures as "fees" in order to achieve federal jurisdiction.

To fulfill the purposes of the Tax Injunction Act, and because the specialty plate charges cannot under these facts constitute regulatory fees, we are persuaded that the additional charges for specialty plates must be characterized

as taxes.

Even though the specialty plate charges may be considered taxes within the scope of TIA, the federal courts may entertain Keeler's suit if it falls within the Supreme Court's recent discussion of the TIA in *Hibbs*. There, the Supreme Court confronted an Establishment Clause challenge to an Arizona statute that authorized "income-tax credits for payments to organizations that award educational scholarships and tuition grants to children attending private schools." 124 S.Ct. at 2281. The plaintiffs, who did not avail themselves of the tax credits, sought to enjoin the statute's operation. Focusing on the status of the plaintiffs and the relief sought, the Court concluded that the TIA applies only where the "state taxpayers seek federal court orders enabling *them* to avoid paying state taxes." *Id.* at 2289 (emphasis added). *Hibbs* addressed "the question whether the [TIA] was intended to insulate tax laws from constitutional challenge in lower federal courts even when the suit would have no negative impact on tax collection." Because the plaintiffs there were attacking a tax credit, and the impact of their suit would overturn the credit, thus restoring money to the state treasury, the Court held Section 1341 was not intended "to stop third parties from pursuing constitutional challenges to tax benefits in a federal forum." *Id.* at 2290. *Hibbs* opened the federal courthouse doors slightly notwithstanding the limits of the TIA, but it did so only where (1) a third party (not the taxpayer) files suit, and (2) the suit's success will enrich, not deplete, the government entity's coffers. *See id.* at 2888-90.[6]

Keeler's First Amendment attack on Louisiana's prestige

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[6] See Harvard Law Review, The Supreme Court, 2003 Term--Leading Cases: Tax Injunction Act, 118 Harv. L.Rev. 486, 489-90 (2004); Martin A. Schwartz, Challenging The Constitutionality Of State Tax Policies In Federal Court, N.Y.L.J., Oct. 19, 2004, at 3.

license plate program satisfies only the first part of *Hibbs*. Her success, however, flies in the face of *Hibbs*'s second prong: in enjoining the program's operation, Keeler's judgment has placed the federal courts in the position of reducing state tax revenues. *Hibbs* affords no support for Keeler's demand to eliminate the revenues generated by the specialty plate program.

As a footnote to this discussion, we observe our disagreement that the injunction obtained by Keeler is constitutionally appropriate. On the contrary, in other cases in which a plaintiff has objected to her exclusion from a state-sponsored forum, the Supreme Court's remedy has not been to close down the forum and censor the speech of others, but to approve injunctions opening up the forum to the plaintiff.[7] Had Keeler sought such forum-opening relief, and had she succeeded on the merits (a hypothetical exercise on this record), the proper relief would have entailed an increase of state revenues and would not conflict with *Hibbs* or the TIA. We are bound, however, by Keeler's tactical choice and the district court's actual remedy.

For the foregoing reasons, the Tax Injunction Act applies

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[7] *See, e.g., Rosenberger v. Rector and Visitors of Univ. of Virginia*, 515 U.S. 819, 115 S.Ct. 2510, 132 L.Ed.2d 700 (1995) (university student organization brought an injunction action against a university challenging denial of funds); *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 103 S.Ct. 948, 74 L.Ed.2d 794 (1983) (union and members brought action seeking injunction permitting access to a school board's internal mail system); *Widmar v. Vincent*, 454 U.S. 263, 102 S.Ct. 269, 70 L.Ed.2d 440 (1981) (holding that a public university may not prohibit a recognized student group from using school facilities for religious worship services or teaching); *Police Dept. of City of Chicago v. Mosley*, 408 U.S. 92, 92 S.Ct. 2286, 33 L.Ed.2d 212 (1972) (striking as discriminatory a city ordinance prohibiting all picketing within one hundred-fifty feet of a school, except peaceful picketing of any school involved in a labor dispute).

to Keeler's challenge to the Louisiana specialty plate program, and federal courts have no jurisdiction to entertain it. The judgment is accordingly VACATED and the case is REMANDED WITH INSTRUCTIONS TO DISMISS.

VACATED; REMANDED WITH INSTRUCTIONS TO DISMISS.

United States District Court
for the Eastern District of Louisiana.

No. CIV. A. 00-2237.

Russell J. Henderson; Doreen Keeler; Robert H. Loewy and Greater New Orleans Section of the National Council of Jewish Women,
Plaintiffs,
v.
Richard J. Stalder, Secretary, Department of Public Safety and Corrections; John Kennedy, State Treasurer,
Defendants.

July 8, 2003.

ORDER AND REASONS

DUVAL, District Judge.

Before the Court is a Motion to Dismiss filed by defendants Richard L. Stalder, Secretary of the Louisiana Department of Public Safety and Corrections ("Stalder"), and John N. Kennedy ("Kennedy"), Treasurer of Louisiana. (Doc. No. 59) and a Motion for Partial Summary Judgment (Doc. 60) filed by plaintiffs Russell J. Henderson ("Henderson"), Doreen Keeler ("Keeler"), Robert H. Loewy ("Loewy"), Greater New Orleans Section of the National Council of Jewish Women ("NCJW"), Planned Parenthood of Louisiana ("Planned Parenthood") and Eugene LaMothe ("LaMothe"). The Court held oral argument on these motions on June 25, 2003. Having reviewed the pleadings, memorandum, and the relevant law, the Court finds as follows.

At the outset, the Court would note that this case is not about abortion, the right to life or the right to choice; it is about the First Amendment and the constitutional guarantees that have been the bedrock of this great nation. To gloss over this most basic right of citizens of the United States is to invite a ride on the slippery slope to losing those rights.

I. Procedural and Factual Background

This case was initially filed on July 31, 2000 by Henderson and Keeler. Loewy and NCJW were added as plaintiffs in an Amended Complaint on August 7, 2000. Plaintiffs challenged the constitutionality of La.Rev.Stat. 47:463.61 (the "Act") which creates a "Choose Life" prestige Louisiana license plate and a "Choose Life" fund within the state treasury.[1]

A. The Act

The Act provides that special "prestige" license plates bearing the legend "Choose Life" shall be established by the Department of Public Safety and Corrections ("the Department") provided there are a minimum of one hundred applicants for such plates. The annual fee for such a plate is

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[1] The Act states specifically as its purpose:

To enact R.S. 47:463.57, relative to motor vehicles; to provide relative to license plates; to create the "CHOOSE LIFE" prestige license plate; to provide for the issuance of such plate; to provide for a minimum number of applicants; to provide for the design and color of such plate; to provide relative to the fees for such plates; to provide for the creation of the "Choose Life" fund within the state treasury; to provide for the deposit of certain monies into the fund; to provide for the use of such monies; to provide for the qualifications of organizations applying for receipt to such monies; to require annual audit; to create the Choose Life Advisory Council; to provide for membership, terms, duties and pay for members of such Council; to authorize promulgation of rules and regulations; and to provide for related matters.

It should be noted that Act was re-numbered upon codification.

$25.00, in addition to the regular motor vehicle license fee plus a $3.50 handling fee "to be retained by the department to offset a portion of the administrative costs."

Under the Act's provisions, the revenue generated by the $25.00 surcharge is deposited into the state treasury to be distributed by the State Treasurer upon the recommendation by a "Choose Life" Advisory Council ("the Council"). These distributions must go to organizations established under section 501(c)(3) of the 1954 Internal Revenue Code and which organizations counsel women to place their children up for adoption. The Council is to select the color and design of the plate, is to review grant applications and is to make recommendations about the awarding of the grants. However, the decision with respect to the actual distribution of funds is ultimately to be made by the State Treasurer.

The Council is to be comprised of the president or designee of the American Family Association, the Louisiana Family Forum and the Concerned Women of America organizations. The Council at its discretion may also add members from other specified secular groups.[2] Members of the Council serve for one-year terms, on a voluntary basis. No money is to be distributed to any organization that is involved in or associated with abortion clinics or pro-abortion advertising. Fifty percent of the funds is to be used for the material needs of the expectant mothers considering adoption and the remaining moneys may be used for counseling, training, and providing pregnancy testing but is not to be used for administrative, legal or capital expenditures.

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[2] Seven groups are delineated; physicians specializing in obstetrics; physicians specializing in pediatrics; women who have surrendered children for adoption; couples who have adopted children; adoption advocacy groups; board-certified social workers; and certified counselors.

B. Plaintiffs' Initial Contentions

Plaintiffs initially contended in their Complaint and First Amended Complaint that the Act delegates government functions to Christian fundamentalist organizations, that taxpayer money will be used to administer the Act, that no prestige license plate is available for "pro-choice" citizens and that the statute harms the plaintiffs' religious freedom as the Act places the State's imprimatur on fundamentalist Christian beliefs and advances those beliefs by creating a symbolic union between Christian fundamentalism and the State of Louisiana. As such, plaintiffs argued that a preliminary injunction should be issued to prohibit the defendants, Stalder and Kennedy from "enforcing or implementing Louisiana House Bill No.2082, codified at La.Rev.Stat. § 47:463.61 (1999)" and specifically directing them to halt production of the "Choose Life" special prestige license plates.

Thus, they sought a preliminary injunction reasoning that (1) the Act's delegation of a governmental function to Christian fundamentalist organizations violated the Establishment Clause of the First Amendment and (2) in the absence of an injunction, the State of Louisiana (the "State") would be actively engaging in viewpoint discrimination by allowing a pro-life viewpoint to be expressed through license plates, but not a pro-choice view in contravention of the First Amendment right to free speech.

C. This Court's First Ruling

A Motion for Temporary Restraining Order ("TRO") and Preliminary Injunction was filed by plaintiffs on August 7, 2000. The Court denied the TRO on December 8, 2000, and set the preliminary injunction for hearing on August 23, 2000. On August 29, 2000, this Court granted the motion for preliminary injunction and enjoined defendants from enforcing or implementing the Act. In doing so, this Court

rejected the defendants argument that the "Choose life" license plate constituted an expression of "state speech" and therefore did not create a forum for private speech..[3] Rather, the Court found that the state had created a private forum under the license plate scheme. As such, assuming that the prestige license plates constituted a non-public forum, this Court found that the defendants had to maintain view-point neutrality with regard to the messages displayed. As the State took the position unequivocally that "Choose Life" was its own private message, this Court found that "the State fails in its responsibility to provide a viewpoint-neutral forum, and the Act will probably be found to be an unconstitutional violation of the First Amendment right to free speech." *Henderson v. Stalder,* 112 F.Supp.2d 589, 599 (E.D.La.2000).

A Notice of Appeal was filed on September 26, 2000, from the injunction while the matter remained open on this Court's docket. On October 20, 2000, plaintiffs sought a stay of the preliminary injunction. While that was pending, a Second Amended Complaint was filed adding Planned Parenthood and LaMothe. The Motion for Stay was denied by this Court on December 22, 2000. On January 17, 2001, the initial appeal by defendants was dismissed for want of prosecution.

Delays in the prosecution of the case occurred because of the possibility of a legislative resolution to the dispute; however, no resolution was ever reached. On May 16, 2001, the Court of Appeals granted the defendant's Motion to Reinstate Their Appeal. Nonetheless, the matter was open on the Court's docket and eventually set for trial. Some

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[3] The Court also found that there was no substantial likelihood of success on plaintiffs' Establishment Clause claim because there was insufficient evidence of an excessive entanglement sufficient to render the Act unconstitutional. *Henderson,* 112 F.Supp.2d at 595.

discovery was conducted, and trial was then set for July 18, 2002. The matter was eventually stayed on April 30, 2002, pending the appeal.

D. The Appeal

While the issue of standing was not raised by the parties before this Court, the United States Court of Appeals for the Fifth Circuit raised the issue sua sponte with respect to each of the plaintiffs, including those who were not before this Court when the preliminary injunction was granted. *Henderson v. Stalder,* 287 F.3d 374, 379 (5th Cir.2002). The appellate court analyzed three distinct categories for purposes of standing--(1) taxpayer, (2) individual, and (3) organizational.

It first addressed "taxpayer standing" as alleged by Henderson, Keeler, Loewy and LaMothe. With regard to any allegation of injury based on the use of their tax money to make and distribute the Choose Life license plate, the appellate court held that these plaintiffs lacked a sufficient personal stake to challenge this law of general applicability since they could not show a direct pecuniary injury as a result of its enforcement. *Id.*

With respect to the taxpayer claim based on the administration of the statute including the establishment and maintenance of the Choose Life Council and Fund, the Fifth Circuit analyzed the standing of the taxpayers with regard to the use of tax dollars to administer a statute which violates the Establishment Clause. It found that under the language of funding scheme of the statute, the allegations that tax dollars were to be used was insupportable because of the various fees imbedded in the statute, and thus no standing was found under this theory. *Henderson,* 287 F.3d at 380.

The appellate court also examined with respect to taxpayer's standing, Loewy, LaMothe and the NCJW's allegations that the state harmed their religious beliefs and/ or

principles and endorsed Christian fundamentalism in contravention of the Establishment Clause, because the mandatory members of the Choose Life Council belong to organizations which allegedly espouse a belief in Christianity. The appellate court found no standing with respect to those claims because of the "conjectural" nature of these allegations. The Fifth Circuit stated in that regard:

> There is, however, no allegation that the mandatory members of the Council have yet distributed any money from the Choose Life Fund or that in so doing, or contemplating distributions, they have actually advanced the religious ideologies of their respective organizations or religion in general. At best, the focus of the alleged injury complained of by these plaintiffs arises because of an appearance of future impropriety which we have found insufficient to confer standing. [*Public Citizen, Inc. v.] Bomer,* [274 F.3d 212,] at 218 (5th Cir.2002).

Id. Thus, the appellate court found that Loewy, LaMothe and NCJW in their allegations concerning the manner in which the Choose Life statute would be administered, failed to allege an "injury in fact" and thus lacked standing to challenge the facial constitutionality of that statute. In a footnote, the Fifth Circuit noted that the unavailability of a facial challenge did not imply that an as-applied challenge at a future date after implementation of the statute would be foreclosed.

The Fifth Circuit then examined whether Keeler as an individual had standing based on her alleged injury based on there being no similar "Pro-Choice" prestige plate. The Fifth Circuit relying on *Lujan v. Defenders of Wildlife,* 504 U.S. 555, 112 S.Ct. 2130, 2136, 119 L.Ed.2d 351 (1992), found

that for there to be standing Keeler had to show that the injury about which she complained will "likely be redressed by a favorable decision of the Court." Since declaring the statute unconstitutional would not provide Keeler with a forum, rather it would simply prevent others from expressing their view, the Fifth Circuit found that the injury could not redressed by a declaration that the Choose Life statute is unconstitutional.[4]

The Fifth Circuit then addressed "organizational standing"-that is the standing of Planned Parenthood. The appellate court stated:

> The injury complained of by [Planned Parenthood] arises from its alleged exclusion from eligibility to receive grants from the Choose Life Fund because it engages in abortion-related activities. The relief requested by [Planned Parenthood] arises from its alleged exclusion from eligibility to receive grants from the Choose Life Fund because it engages in abortion-related activities. The relief requested by [Planned Parenthood] in federal court is a declaratory judgment that [the Act] is unconstitutional. We find that even if the Choose Life statute is declared unconstitutional, the injury complained of by [Planned Parenthood] would not be redressed because there would then be no fund from which [Planned Parenthood] could seek grants.

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[4] In her special concurrence, Judge Jones noted that a way to overcome this infirmity was for Keeler to challenge the entire scheme to bring her within the holding of *Orr v. Orr*, 440 U.S. 268, 99 S.Ct. 1102, 59 L.Ed.2d 306 (1979). *Henderson*, 287 F.3d at 386.

Henderson, 287 F.3d at 382. Thus, based on the lack of redressability, the appellate court found the Planned Parenthood had not established that its standing to challenge the statute.

Having found that not one plaintiff had established standing, the Fifth Circuit reversed, vacated and remanded the case to this Court for an entry of dismissal.

E. Procedural Activity Post-Appeal

On April 12, 2002, plaintiffs moved for Rehearing en Banc. On August 9, 2002, the petition was denied. Plaintiffs sought to stay the mandate pending petition for writ of certiorari to the United States Supreme Court, which was denied on September 24, 2002. Mandate issued and this court dismissed the suit as instructed. The Supreme Court denied the petition for certiorari on December 10, 2002.

On January 9, 2003, the Fifth Circuit then issued the following order:

> The court's previous order, entered September 24, 2002, denying appellees' motion to stay the mandate pending petition for writ of certiorari, is hereby VACATED; the mandate issued herein is RECALLED; the court VACATES its order of August 9, 2002 denying appellees' petition for rehearing en banc, and substitutes the following response to appellees' motion for rehearing en banc:
>
> The petition for rehearing en banc is DENIED. The case is remanded to the district court with instructions to dismiss the case for lack of standing unless the plaintiff Keeler amends her petition within a reasonable time to challenge the state's overall policy and

> practice of issuing specialty license plates. Judge Davis would grant rehearing for reasons stated in his dissent.

(Doc. 54). Following the Fifth Circuit's instructions, the previous judgment dismissing this case was vacated and plaintiff Keller was given until March 7, 2003 to amend the petition to challenge the state's overall policy and practice of issuing specialty license plates.

F. The Third Amended Complaint and the Instant Motions

On March 6, 2003, the Third Amended Petition was filed. In it, Henderson, Keeler, Loewy, NCJW, Planned Parenthood and LaMothe appear as plaintiffs and an attempt is made by them to allege standing as to each. In addition, plaintiffs contend that Third Amended Complaint amends the prior complaint in several important respects:

> (1) the Third Amended Complaint explicitly raises a First Amendment challenge to the entire overall policy and practice under which Louisiana makes available certain specially designed license plates for the expression of certain views by Louisiana vehicle owners, and seek declaratory and injunctive relief against this entire policy and practice;
>
> (2) the Third Amended complaint specifies that, if an injunction against the entire statutory scheme is not granted, alternatively Planned Parenthood requests that the Court enjoin the defendants from enforcing or implementing the last sentence of La.Rev.Stat. § 47:463.61(F)(2), which bars Planned parenthood from receiving Choose Life grants because it is an "organization involved in, or associated with counseling for, or referrals to, abortion clinics, providing medical abortion-related procedures, or pro-abortion advertising: ('the disqualification clause'), and sever that sentence

from the remainder of the statute"; and

(3) the Third Amended Complaint adds a new claim for Planned Parenthood, to ~~wit, that the~~ participation of the Choose Life Council in grant-making decisions under La. Rev. stat. § 47:463:61 violates the Establishment Clause.

(Doc. 60, Plaintiffs' Memorandum of Law, p. 2-3).

In response, defendants filed the instant Motion to Dismiss. They claim that the amended complaint fails to state a claim and should be dismissed because:

1. using principles of *res judicata*, law-of-the-case, and/or the rule of mandate, all of the claims of all of the plaintiffs were dismissed save for Keeler's and thus the Court may not entertain the other claims.

2. Planned Parenthood's claims should be dismissed "because they are virtually identical to *Rust v. Sullivan*, 500 U.S. 173, 111 S.Ct. 1759, 114 L.Ed.2d 233, (1991) and similar cases."[5]

3. That the footnote alluding to the possibility of an as-applied challenge in light of the "unavailability" of a "facial challenge" with respect to the Establishment Clause claims, did not authorize the re-urging of the dismissed claims as an "as-applied challenge" at this time.

4. As to Keeler's claim, that even as reconstituted as challenging the entire licensing scheme, the claim fails because the license plate constitutes Government speech which is not subject to First Amendment application by a federal court.

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[5] The Supreme Court in *Rust* basically held that viewpoint-discriminatory conditions on government subsidies does not violate First Amendment free speech rights.

In addition, they contend that the Court lacks jurisdiction and thus should dismiss the amended complaint because:

> 1. all plaintiffs except Keeler lack standing as outlined by the 5th Circuit.
>
> 2. Planned Parenthood claims raise no federal question jurisdiction because they have been rejected by *Rust*.
>
> 3. Any new claims made by plaintiffs to come within the "as-applied" caveat of footnote 6, are still hypothetical and no allegation of facts as to actual occurrences to prove actual constitutional injury are alleged and thus lack standing.

(Doc. 59).

In response, defendants filed a Motion for Partial Summary Judgment and Opposition to the Motion to Dismiss. Plaintiffs oppose defendants' motion, and in addition, seek summary judgment finding the entire licensing scheme an unconstitutional impingement on the First Amendment, and in the alternative, seek an injunction against the implementation and/or enforcement of the disqualification clause as noted above. With that as background, the Court will now take up the issues before it.

II. Defendants' Motion to Dismiss

A. The Mandate

As previously noted, the Fifth Circuit mandate required this Court to dismiss the case for lack of standing unless the plaintiff Keeler amended her petition within a reasonable time to challenge the state's overall policy and practice of issuing specialty license plates. In The Third Amended Complaint Keeler indeed challenges the license plate scheme in toto; however, plaintiffs contend that the Third Amended Complaint also amends the Planned Parenthood claim to allow for a remedy that solves the redressability concerns of

the 5th Circuit-that is the enjoining of the "disqualification clause" of the Act. They argue that the Third Amended Complaint also adds a claim with respect to Planned Parenthood, that is that the implementation of the Choose Life Council contravenes the Establishment Clause. In addition, Henderson, Loewy, NCJW, and LaMothe, each now allege Establishment Clause violations based on "the Act's symbolic union between the state of Louisiana and fundamentalist Christian organizations" and challenges the Act "on its face and as it has been implemented."

Defendants argue that the mandate does not allow for these amendments. Rather, they maintain that the only claim that should be allowed to proceed is the Keeler claim. Undoubtedly, the mandate rule provides that a lower court on remand must "implement both the letter and the spirit of the appellate court's mandate and may not disregard the explicit directives of that court." *United States v. Becerra*, 155 F.3d 740, 753 (5th Cir.1998). However, plaintiffs' position is without merit as the dismissal of the other plaintiffs was based on lack of standing. As stated in one treatise:

> There is little mystery about the res judicata effects of a judgment that dismisses an action for lack of subject-matter or personal jurisdiction or for improper venue. Civil Rule 41(b) provides that a dismissal for lack of jurisdiction or improper venue does not operate as an adjudication upon the merits. This provision means only that the dismissal permits a second action on the same claim that corrects the deficiency found in the first action.

Charles Alan Wright, Arthur Miller, Edward Cooper, 18A *Federal Practice and Procedure* § 4436. As there has been no adjudication on the merits, and plaintiffs could as easily

file a new suit and seek consolidation with this suit, defendants' motion to dismiss based on the mandate is without merit. Judicial economy requires such a decision. Thus, defendants' Motion to Dismiss all plaintiffs save Keeler based on defendants' argument concerning the mandate is **DENIED.**

Thus, the Court must examine whether now, as amended, plaintiffs have standing in light of the Fifth Circuit's reasons in its previous opinion and the specific amendments to the Complaint.

B. Standing

1. Taxpayer Standing

Henderson, Keeler, Loewy and LaMothe again allege injury based on the use of their respective tax money being used to support "the symbolic union between the State of Louisiana and fundamentalist Christian organizations established by [the Act]." They further challenge the Act "on its face and as it has been implemented." To the extent that such an allegation is meant as a challenge to the use of tax dollars to make and distribute the Choose Life plates, plaintiffs have not alleged anything that would distinguish their standing under the Third Amended Complaint from the Fifth Circuit's ruling in *Henderson,* 287 F.3d at 379. The Act still has the same provisions to pay for the cost of the administration of the scheme. Thus, the Fifth Circuit's rationale that these allegations are "insufficient" to confer standing for Henderson, Keeler, Loewy and LaMothe stands, and their claims must be dismissed in that regard.

To the extent that the Third Amended Complaint as to state taxpayer plaintiffs alleges harm based on the use of their income tax dollars to administer the Choose Life statute, again, the Third Amended Complaint has not resolved the Fifth Circuit's concerns. Since according to the Fifth Circuit, the Act itself appears to contradict the plaintiffs' allegation

that state income tax dollars would be used for the administration of the statute,[6] as to the new "implementation" claim in the Third Amended Complaint, there can be no standing for the taxpayers based on the Fifth Circuit's rationale.

To the extent that the use of the description of the harm as "the symbolic union between the State of Louisiana and fundamentalist Christian organizations established by the Act" seeks to demonstrate an Establishment Clause violation raising a specter of future impropriety, it would appear under the Fifth Circuit's rationale, there are still no allegations of actual wrong-doing and thus, no standing in that regard either. *Henderson,* 287 F.3d at 380 citing *Bomer,* 274 F.3d at 218.

Likewise, with respect to the new allegations of the taxpayers that they challenge the Act on its face and as it has been implemented, counsel for plaintiffs admitted during oral argument, there have been no payments from the fund. Thus, there are no allegations that distributions have been made in the Third Amended Complaint. Accordingly, the allegations as to taxpayer standing on an "as-applied" basis are without merit.

Thus, defendants' motion to dismiss Henderson, Loewy,

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[6] The Fifth Circuit stated:

Under the statute, members of the Council serve on a voluntary basis and are not provided "compensation or reimbursement of any type." La.Rev.Stat. § 27:463.61(E)(1). Additionally, the statute requires the payment of an additional $3.50 fee, in addition to the regular motor vehicle license fees, to offset a portion of the associated administrative costs. *Id.* at § 47:463.61(C). Under these facts, we find that the complained of injury of the state taxpayer plaintiffs, i.e., use of their income tax dollars to administer the Choose Life statute, is insupportable and therefore, insufficient to confer standing to challenge the constitutionality of that statute.

NCJW, and LaMothe, based on taxpayer status is **GRANTED.**

Next, as the Fifth Circuit did in its opinion, the Court will now examine standing based on Loewy, LaMothe and NCJW's the allegations that their religious beliefs or principles are harmed by the Act's endorsement and advancement of Christian fundamentalism. As noted with respect to the taxpayers' claim above, the allegations in the Third Amended Complaint still do not allege that the mandatory members of the Choose Life Council have yet distributed any money or that they have actually advanced religious ideologies. Indeed, counsel for plaintiffs admitted that there simply have been no payments made yet and thus no allegations to that end are in the Third Amended Complaint. The "appearance of future impropriety" was found by the Fifth Circuit to not satisfy an injury in fact such as to confer standing. *Henderson,* 287 F.3d at 380 relying on *Public Citizen, Inc. v. Bomer,* 274 F.3d 212, 218 (5th Cir.2001). Thus, these plaintiffs do not have standing at this juncture to raise these claims, and the Motion to Dismiss Loewy, LaMothe and NCJW in relation to their religious beliefs being harmed is **GRANTED.**

2. Individual Standing

The Fifth Circuit focused solely on Keeler's allegations. Keeler has amended her allegations to state:

> In addition, she owns a 1996 passenger car and would like to purchase a prestige license plate expressing her pro-choice views but is unable to do so as a result of the defendants' creation of a viewpoint discriminatory forum through Louisiana's policy and practice of issuing "special prestige license plates," "prestige license plates," and "special license plates," generally codified as La. Rev. stat. § §

> 47:463.7-47:463.110 ("the statutory scheme"), pursuant to which the Legislature has unbridled discretion in determining when to grant or deny a request for a new plate, including those that express Keeler's political viewpoint.

(Doc. 58, Third Amended Complaint, ¶5). These allegations, along with the paragraphs outlining the statutory scheme in detail (¶¶ 19 -24) are sufficient to meet the Fifth Circuit's requirements. Thus, Keeler has standing to bring this suit.

3. Organizational Standing

As noted above, in the Fifth Circuit's opinion, the appellate court found that Planned Parenthood did not have standing because the relief it requested failed with respect to redressability. Because the injury complained of by Planned Parenthood, the denial of funds, would not be redressed by eradicating the fund, the Fifth Circuit found that Planned Parenthood had no standing. *Henderson,* 287 F.3d at 382 citing *Association of Cmty. Orgs. for Reform v. Fowler,* 178 F.3d 350, 356 (5th Cir.1999).

In the Third Amended Complaint, as previously noted, plaintiffs seek a declaration that the scheme is unconstitutional. In the alternative, they request that the Court direct defendants to make available a "pro-Choice" license plate with fees like the Pro-Life license with the proceeds of the annual fees to be deposited into a fund to assist needy women who want abortions for health-related reasons and to enjoin the defendants from implementing the last sentence of the Act-that is the disqualification clause.

With these amendments, it would appear thus appear that Planned Parenthood has addressed the redressability infirmities upon which the Fifth Circuit denied the group standing. As such, the Court finds that they have standing. Thus the Motion to Dismiss Planned Parenthood for lack of

standing is **DENIED.** However, since the claims of Planned Parenthood are alleged in the alternative, and become moot in the event the Court finds the entire license plate scheme unconstitutional, the Court will now turn to what is in essence cross-motions for summary judgment on the constitutionality of the license plate scheme.

III. Cross-Motions Concerning the Constitutionality of the License Plate Scheme Based on the First Amendment

Defendants' argue that as to Keeler's claim, "even as reconstituted as challenging the entire licensing scheme, the claim fails because the license plate constitutes Government speech which is not subject to First Amendment application by a federal court." Plaintiffs have countered with their own motion seeking judgment that the entire scheme is subject to First Amendment forum analysis and is unconstitutional because the scheme discriminates based on viewpoint. A brief overview of the statutory scheme is thus required.

A. The License Plate Statutory Scheme

It is undisputed that through a series of statutes, Louisiana has established numerous license plates that are available for motor vehicles which differ from the standard license plates required under Louisiana law, *see* La.Rev.Stat. § 47:505, in that they contain a message over and above identifying the car to which the license plate is attached. The statutes authorizing these alternative plates are codified at La.Rev.Stat. § § 47:463.3 and 47:463.7-463.16, 47:463.18, 47:463.20, 47:463:22-63.34, 47:463.36-463.110. These plates are called a number of different names-"special license plates", "special prestige license plates", "prestige license plates", and other plates are simply titled *sui generis* according to the organization, cause or issue they represent. For purposes of this opinion, the Court will refer to these as "prestige license plates."

As alleged in plaintiffs' Third Amended Complaint, the statutes codifying prestige plates vary in several respects, for example:

1. whether an extra fee is required;

2. whether that fee is called a "fee", "royalty" or "donation";

3. the amount of such fee;

4. whether the fee, if any, is a one-time charge or is an annual one;

5. whether the proceeds from such fees are to be given to specific organizations directly or whether the proceeds are to be deposited into the state treasury;

6. whether a design or slogan for the plate is specified in the statute, or is to be determined by some other process;

But each of these plates constitute a form of expression. These expressions or statements can be broken into categories.

One category is those prestige license plates that demonstrate membership in a particular group or association which require the applicant to be a member of the group or association-e.g., § 47:463.7 (special license plate for former prisoners of war issuable only to such individuals); § 47:463.14 (special Farhad Grotto license plates, available only to members of a "Grotto organization" for use by the member in "Grotto parades or for other escort services"); § 47:463.25 (special prestige license plates for veterans of the "Vietnamese conflict"). (See Third Amended Complaint at 7-12).

Another category of prestige license plate expression declares support for an institution or entity, without requiring membership in that group. These states include, for example § 47.463.39 (special license plate for the United States

Olympic Committee, available to any citizen of Louisiana; proceeds to be distributed between the United States Olympic Committee and the Louisiana Games Foundation after deduction of $1 to offset administrative costs); 47:463.54 (special prestige license plate for the Wild Turkey Federation; proceeds ultimately to be placed in the "Louisiana Wild Turkey Stamp Fund"); § 47:463.57 (special prestige license plates available to any citizen of Louisiana, for McKinley High School; proceeds to be forwarded to the McKinley High School Alumni Association, less a "handling fee" of $3.50). § 47:463.67 (special prestige license plates including the phrase "I Support River Region Cancer Center"; proceeds ultimately to be disbursed to the River Region Cancer Screening and Early Detection Center). (*See* Third Amended Complaint 12-15).

Yet another category demonstrates support for a cause or idea. These contain a slogan or support a cause, with some overlap with above noted groups. For example, § 47:463.45 (special prestige license plates bearing "a logo with a picture of a Louisiana black bear"; proceeds to be deposited into the state treasury; state treasurer must then place an equal amount in the Conservation Fund in the "black bear account"); § 47:463.60 (special prestige "Animal Friendly" license plates,) available to any citizen of Louisiana, provided there is a minimum of one hundred applicants for such plate; proceeds to be deposited into the Pet Overpopulation Fund; also establishing "Pet Overpopulation Advisory Council" to oversee expenditure of the funds. The Act which provided the genesis for this suit, 47:463:61 would be considered a member in this category. (See Third Amended Complaint 15-17).[7]

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[7] The Court would note that there is a distinction between a "vanity plate" and a "prestige plate" or a "specialty plate." Vanity plates are where a state will customize the arrangement of letter and numbers to create a

Regardless of the category, each prestige license plate issued in Louisiana is permitted only by statute rather than by any administrative process. Each demonstrates some form of expression: membership in a group or organization; support for an institution; or endorsement of a cause, slogan or belief. Thus, only through legislative enactment of a statute can an organization, group of individuals, or other entity participate in this form of expression by obtaining and using such a license plate.

It is this scheme that Keeler maintains violates the First Amendment.

B. Speech

The Supreme Court has examined what constitutes "speech" for the purposes of the First Amendment. As stated in *Texas v. Johnson,* 491 U.S. 397, 109 S.Ct. 2533, 105 L.Ed.2d 342 (1989):

> In deciding whether particular conduct possesses sufficient communicative elements to bring the First Amendment into play, we

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plate for one individual and it cannot be duplicated. A prestige plate or specialty plate is where a license plate is created to refer to a specific group like the Shriners or a school. The plates at issue are a specialty plates. Furthermore, an argument can be made that a specialty plate may constitute a limited public forum, whereas vanity plates should be considered a nonpublic forum. Jack Achiezer Guggenheim & Jed Silversmith, *Confederate License Plates at the Constitutional Crossroads: Vanity Plates, Special Registration Organization Plates, Bumper Stickers, Viewpoints, Vulgarity, and the First Amendment* 54 U. Miami L.Rev. 563, 577 (2000).

Specifically, in plaintiffs' Third Amended Complaint they do not include La.Rev.Stat. § 47:463.2 which embodies the vanity plate provision. In addition, they specifically exclude "certain other safety-or traffic-related alternative license plates, such as plates for handicapped individuals," which appear to be designed to serve a legitimate safety, traffic or law enforcement function.

> have asked whether "[a]n intent to convey a particularized message was present, and [whether] the likelihood was great that the message would be understood by those who viewed it." *[Spence v. State of Washington,]* 418 U.S. [405], at 410-411, 94 S.Ct. [2727], at 2730 [41 L.Ed.2d 842 (1974)].

Id., 491 U.S. at 404, 109 S.Ct. at 2539. The Supreme Court has addressed the issue of speech in the context of license plates.

In *Wooley v. Maynard*, 430 U.S. 705, 97 S.Ct. 1428, 51 L.Ed.2d 752 (1977), the Supreme Court was faced with the question of "whether the State may constitutionally require an individual to participate in the dissemination of an ideological message by displaying it on his private property in a manner and for the express purpose that it be observed and read by the public." In that case, the Maynards had been criminally prosecuted for having covered the New Hampshire state slogan "Live Free or Die" on their license plate. "As Jehovah Witnesses, plaintiffs found the slogan to be morally, ethically, religiously and politically abhorrent." *Id.* at 713, 97 S.Ct. at 1434. The Court found that the State could not so require.

In reaching that decision, the Supreme Court found that New Hampshire in effect required that the Maynards use their private property as a "mobile billboard" for the State's ideological message or suffer a penalty since an individual would have to have such a plate on his personal property in order to drive. As such, the Court reasoned that "The State 'invades the sphere of intellect and spirit which is the purposed of the First Amendment to our Constitution to preserve from all official control.' " *Id.* at 715, 97 S.Ct. at 1435. The Court continued, "The First Amendment protects the right of individuals to hold a point to view different from

the majority and to refuse to foster, in the way New Hampshire commands, an idea they find morally objectionable." *Id.* at 715, 97 S.Ct. at 1436. Thus, the Supreme Court has held that license plates constitute speech for purposes of this analysis. Thus, the next question is whether the speech at issue constitutes "government speech" or "private speech."

C. Government v. Private Speech

Defendants contend that these legislative enactments embody government speech that is outside the reach of First Amendment protection and as such, Keeler's claim should be dismissed for failure to state a claim. Defendants state:

> Any and all statutes (and all of the words of a statute) are necessarily state speech spoken by the state legislature. Because the slogans or messages on the state's license plate is mandated by statutory law enacted by the Louisiana Legislature, it is clearly state speech. Even if such messages first appeared as private speech somewhere, when the Louisiana Legislature adopted the words and made them into its own messages for state license plates, those words and messages on those license plates are state speech. The Louisiana state legislature has done nothing to turn the states' specialty license plate program over to private speakers for their private speech in lieu of the messages and slogans of the state. The First Amendment does not allow federal courts to silence state governmental speech, and *fora* analysis does not apply to state governmental speech.

(Doc. 59, Motion to Dismiss at 2-3). The linchpin of this argument is that defendants maintain that the state has not

created a forum for private speech.

Indeed, as underscored in *Sons of Confederate Veterans, Inc. v. Commissioner of the Virginia Department of Motor Vehicles*, 288 F.3d 610 (4th Cir.2002), clearly " 'the government can speak for itself.' " *Id.* at 616 citing *Bd. of Regents of Univ. of Wis. Sys. v. Southworth*, 529 U.S. 217, 229, 120 S.Ct. 1346, 146 L.Ed.2d 193 (2000). The Fourth Circuit in analyzing *Rust v. Sullivan*[8] and *Rosenberger v. Rector and Visitors of the University of Virginia*,[9] stated:

> Thus, even ordinarily impermissible viewpoint-based distinctions drawn by the government may be sustained where the government itself speaks or where it uses private speakers to transmit its message. [*Legal Servs. Corp. v. Velazquez*, 531 U.S. 533, 121 S.Ct. 1043, 149 L.Ed.2d 63 (2001)] (citing *Southworth*, 529 U.S. at 229, 120 S.Ct. 1346, 146 L.Ed.2d 193,) for the proposition that "viewpoint-based funding decision can be sustained in instances in which the government itself is the speaker," and *Rosenberger v. Rector and Visitors of Univ. of Va.* [citations omitted] for the proposition that such distinctions may be sustained in "instances, like *Rust*, in which the government

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[8] 500 U.S. 173, 111 S.Ct. 1759, 114 L.Ed.2d 233 (1991) (upholding government's prohibition on abortion-related advice applicable to recipients of federal funds for family planning because government did not create a program to encourage private speech but instead used private speakers to transmit specific information pertaining to its own program)

[9] 515 U.S. 819, 115 S.Ct. 2510, 132 L.Ed.2d 700 (1995)(university could not deny use by paper run by Christian editorial staff of funds dedicated to pay for third party printers' work as denial amounted to viewpoint discrimination)

> 'used private speakers to transmit specific information pertaining to its own program.' " The rationale behind the government's authority to draw otherwise impermissible viewpoint distinctions in the government speech context is the accountability inherent in the political process:
>
> > When the government speaks, for instance to promote its own policies or to advance a particular idea, it is, in the end, accountable to the electorate and the political process for its advocacy. If the citizenry objects, newly elected officials later could espouse some different or contrary position.
>
> *Southworth,* 529 U.S. at 235, 120 S.Ct. 1346. In other words, where the government itself is responsible, and therefore accountable, for the message that its speech sends the danger ordinarily involved in governmental viewpoint-based choices is not present.

Nonetheless, in at least two decisions, federal courts have found unequivocally that prestige plates and statutory schemes creating them constitute private speech, not government speech. *See Sons of Confederate Veterans, supra,* and *Planned Parenthood v. Rose,* 236 F.Supp.2d 564 (D.S.C.2002).

In *Sons of Confederate Veterans,* the Fourth Circuit considered whether a special statute which prohibited the use of the Confederate flag on a specialty plate for members of the Sons of Confederate Veterans ("SCV")[10] was subject to

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[10] The flag is the logo of that organization.

the First Amendment because the plate constituted private speech rather than government speech.

The scheme in place in Virginia is not unlike that in Louisiana. The General Assembly of Virginia, created a program through which members and supporters of various organizations or groups could be issued "special" license plates. Such plates had to be specifically authorized by statute. The plates bear the logo and motto of the organization as well as the required letters and numbers needed to identify the vehicle. Ordinarily, a group or organization that wanted a plate would contact a member of the General Assembly seeking a bill to authorize the issuance of such a plate. *Sons of Confederate Veterans*, 288 F.3d at 614. Once authorized, the Commissioner of the department of motor vehicles "prescribed" the design of any plate. *Id.* The design for a special plate was the result of a cooperative process between the Commissioner's agent and the group authorized to receive a special plate. Specifically included in the process was the allowance for a group's logo to be included on the plate. *Id.* The Virginia legislature, in legislating the statute which would allow the Sons of Confederate Veterans a plate, prohibited the use of their logo--the Confederate flag. Thus, the SCV brought suit.

In reaching its decision that the special license plates constituted private speech, the Fourth Circuit examined four factors previously employed by other courts facing the government versus private speech dilemma, which factors this Court finds helpful in its analysis. They are:

> (1) what is the central "purpose" of the program in which the speech in question occurs;
>
> (2) what is the degree of "editorial control" exercised by the government or private entities over the content of the speech;
>
> (3) what is the identity of the "literal speaker"; and

(4) who bears the "ultimate responsibility" for the content of the speech-- the government or the private entity.

Sons of Confederate Veterans, at 618-19 and cases cited therein. As noted, these factors are neither exhaustive nor always applicable, but instructive in this instance. *Id.* at 619, n. 7.

1. Purpose

In *Sons of Confederate Veterans,* with respect to the purpose, the Virginia government took the same position as the defendants in the case herein; the purpose of the plate in the State's eyes was to serve as a vehicle for the expression of government messages honoring those groups for which it authorizes special plates. Likewise, as plaintiffs herein argue, SCV maintained that the purpose was to allow individuals to display their association with and express their pride in the messages or goals of the group for which a special plate was authorized. *Id.*

The Fourth Circuit found both positions too extreme; it concluded that the purpose of the special plate was to produce revenue while allowing, on special plates authorized for private organizations, for the private expression of various views. *Id.* In doing so, the court distinguished the gathering of additional revenues from the use of selective funding decisions as was present and allowable in *Rust.* Furthermore, it noted in reference to the requirement that 350 applicants had to apply for the license within a set period of time prior to the plate being issued, that if the Virginia assembly intended to speak, it is "curious that it requires the guaranteed collection of a designated amount of money from private persons before its 'speech' is triggered." *Id.* at 620. Plus, there was a requirement of "written evidence" that the person purchasing the license was a member of the organization. The court stated:

> These restrictions suggest that the special plate to which they apply are intended by the General Assembly to allow the authorized recipients to express their pride in membership in an organization while facilitating the group's speech. **If non-members cannot obtain the plates, those motorist who have them send a personal message by carrying the plates on their vehicles, because the plates identify them as members of the organization.**

Id. (emphasis added) (citing *Lewis v. Wilson,* 253 F.3d 1077, 1079 (8th Cir.2001)).

Under these criteria, looking at the purpose of the prestige license plate scheme in place in Louisiana, it is pellucid that its purpose is likewise to produce revenue while allowing, on special plates authorized for private organizations, for the private expression of various views. Indeed, much of the revenue produced is funneled to the organizations themselves in the Louisiana program. Many of the plates involved require a minimum number of purchasers prior to production demonstrating that what defendants contend is the Government's speech, is only spoken if someone else pays for it. Finally, as noted, a number of Louisiana prestige plates require proof of membership in the organization prior to being able to purchase same-underscoring the personal nature of the message of the plate.

2. Editorial Control

In Virginia, the court found that the state government exercised little, if any, control. Under that scheme, the Commissioner was prescribed the duty of executing the plates and he had only vetoed one plate in the history of the scheme. Furthermore, as noted, the execution of the license plate design was a joint effort and the "Special Plate Design

Criteria" that was sent to the plate sponsor contained "detailed instructions for insuring that the design submitted by the sponsor would conform to size and space requirements, but had no guidelines regarding the substantive content." SCV's instance was the only time that the state actually legislated a restriction with respect to the actual plate design. Thus, generally private organizations had the control over the editorial content.

Under the Louisiana scheme, it is apparent that the legislature has simply approved the use of organizations' logos which each organization has created; it has not independently arrived at its "editorial" message. Furthermore, there are apparently instances where the design of the plate is delegated to the Assistant Secretary, Louisiana Department of Public Safety and Corrections, Office of Motor Vehicles. As stated in an affidavit filed in conjunction with the instant motion:

> Sometimes the details of what may be contained on the license plate is [sic] delegated by the Louisiana Legislature to AFFIANT, who possesses the power to make rules and regulations regarding them, but the Louisiana Legislature always reserves to itself the determination of what those license plates shall be....
>
> Even when AFFIANT receives suggestions as to a logo or motto from an organization or entity whom the Legislature wishes to give public recognition by authorizing a special prestige motor vehicle registration license plate for it but does not designate in the statutory law what the logo or motto will be on the license plate, it is only AFFIANT who, under the law, has the final decision and

> determination whether that suggested logo or motto will be published on not be published on the license plate.

(Affidavit of Kay Hodges, p. 2-3). Thus, by its own affiant's testimony, it appears that are also instances where the legislature delegates and does not even enter into the design process and the editorial content has its genesis in the organization seeking the plate. Thus, this factor demonstrates that the Louisiana legislature does not always control the editorial process and that indeed in actuality, the process is a group effort with the organization seeking the plate.

3&4. Literal Speaker and Ultimate Responsibility

The Fourth Circuit reasoned, that the "literal speaker" and "who bares the ultimate responsibility" for speech in the case before it was the car owner, thus underscoring the private nature of the speech at issue. Recognizing that the plate itself might constitute the "literal speaker" and the state did own the plate, the Court found more compelling the argument using the analysis found in *Wooley,* 430 U.S. 705, 717, 97 S.Ct. 1428. It stated, "Importantly, though, the special plates are mounted on vehicles owned by private persons, and the Supreme Court has indicated that license plates, even when owned by the government, implicate private speech interests because of the connection of any message on the plate to the driver or owner of the vehicle." *Sons of Confederate Veterans,* 288 F.3d at 621. This analysis is equally applicable to the case at bar and militates this Court find that the speech at issue is private not government speech.

The problem with defendants' analysis is that the State ignores the very essence of how these plates come about. The participants in the license plate scheme seek to express a point of view, a private point of view. In order to do so, they

must find legislators willing to sponsor a bill and be an organization that is so non-controversial that the bill passes and a plate is created. These plates do not spring from the head of the legislature like Athena from the head of Zeus.

As stated by Jeremy Berry in Licensing a Choice: "Choose Life" Specialty License Plates and Their Constitutional Implications, 51 Emory L.J. 1605 (Fall, 2002):

> Courts specifically have held specialty license plates are speech for First Amendment purposes because they contain "the extra dimension of an organization name and a symbolic logo" designed by the organization. The notion is that the license plates, particularly the specific markings of the organization's logo, are expressive conduct and not simply a functional tool for vehicle identification.

Id. at 1622. Indeed this Court found in its previous ruling that the plates did not constitute "government speech" and it continues in that belief for the reasons stated herein.

D. Viewpoint Neutrality

Having determined that private speech is involved ostensibly on government property, the Court must now analyze the validity of the statutory scheme in light of the First Amendment. "The existence of a right of access to public property and the standard by which limitations upon such a right must be evaluated differ depending on the character of the property at issue." *Perry Educ. Ass'n v. Perry Local Educators' Assn.*, 460 U.S. 37, 44, 103 S.Ct. 948, 954, 74 L.Ed.2d 794 (1983). The Supreme Court has recognized that there are basically three fora: (1) the "traditional public forum," (2) "the designated public forum," and (3) the "nonpublic forum". *Lewis* 89 F.Supp.2d at 1088 *citing*

Perry. Examples of traditional public forums are streets and parks that have always been "used for purposes of assembly, communicating thoughts between citizens, and discussing public questions." *Perry*, 460 U.S. at 46, 103 S.Ct. at 955. A designated public forum is "a location or channel of communication designated by the government for use by the public at large for assembly and speech, for use by certain speakers, or for the discussion of certain subjects." *Lewis* 89 F.Supp.2d at 1087 *citing Perry*, 460 U.S. at 45-46, 103 S.Ct. at 955. Finally, a nonpublic forum is any forum which is not by tradition or designation a forum for public communication. *Id.*

However, "[w]here the government is not expressing its own policy, either directly or, as in *Rust*, through an intermediary, it **presumptively** violates the First Amendment when it discriminates on the basis of views expressed by private speakers." *Sons of Confederate Veterans*, 288 F.3d at 622 and cases cited therein. The Fourth Circuit again succinctly explained:

> As the Supreme Court has stated, "[i]t is axiomatic that the government may not regulate speech based on ... the message it conveys." *Rosenberger*, 515 U.S. at 828, 115 S.Ct. 2510. Such viewpoint discrimination presumptively is impermissible whether it occurs within or outside a private speech forum. [*Arkansas Educ. Television Comm'n v.] Forbes*, 523 U.S. [666,] 118 S.Ct. 1633 [, 140 L.Ed.2d 875 (1998)] (stating that viewpoint discrimination is impermissible even where no forum is created at all); *Rosenberger*, 515 U.S. at 828, 115 S.Ct. 2510 (stating that viewpoint discrimination is presumed impermissible in any forum under

forum analysis); *Multimedia Pub. v. Greenville-Spartanburg Airport,* 991 F.2d 154, 159 (4th Cir.1993).

Id.

The State of Louisiana has created a forum-prestige license plates for privately owned vehicles-that is only open to those organizations the viewpoints of which the State approves. There is no neutrality in the scheme as it stands now; by defendants' own description of the scheme, an organization may only obtain a specialty plate if the Louisiana legislature condones the message so as to adopt it. Thus, regardless of the type of forum, it is presumptively unconstitutional.[11]

Furthermore, defendants have not presented any argument that the scheme presents "the least restrictive means available" to serve a "compelling governmental interest." *Sons of Confederate Veterans,* 288 F.3d at 626. To overcome the presumption of unconstitutionality the government must show that its regulations "serve a compelling state interest and that [they are] narrowly drawn to achieve that end." *Perry Educ. Ass'n,* 460 U.S. at 45, 103 S.Ct. 948. The State has not done so.

If the legislature does not approve of the message of the organization, no specialty license plate can be forthcoming. Indeed, a case recently filed in this Court presents another example of the alleged non-neutrality of the process has been presented. In *Butler v. Stalder,* C.A. No. 03-1811, the allegations are starkly similar to the case at bar. In *Butler* an individual alleges to be unable to have a license plate issued

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[11] At least one court and a commentator have viewed the creation of specialty plates as creating a designated public fora. *Sons of Confederate Veterans v. Holcomb,* 129 F.Supp.2d 941, 948 (W.D.Va.2001); Berry, *Licensing A Choice,* 51 Emory L.J. at 166. As such, heightened scrutiny as to the constitutionality of the scheme is required.

for the New Orleans Area Chapter of Parents, Families, and Friends of Lesbians and Gays, Inc. ("P-FLAG").

If the State built a convention hall for speech and then only allowed people to speak with whom they agreed with their message, the State's actions would be in contravention of the First Amendment. There is no significant difference in the case before the Court. The manner in which the specialty plates are created is blatantly not viewpoint neutral. As stated by the Fourth Circuit and cited by the district court in *Planned Parenthood:*

> In the realm of private speech or expression, government regulation may not favor one speaker over another. Similarly, "[t]he government must abstain from regulating speech when the motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction." Thus, where an evaluation of a given restriction and the surrounding circumstances indicates that one or more speakers are favored over others, and further that the basis for the restriction is in fact the message the disfavored speaker seeks to convey, the restriction violates the First Amendment. Moreover, where restrictions or regulations of speech discriminate on the basis of the content of speech, there is an "inherent risk that the Government seeks not to advance a legitimate regulatory goal, but to suppress unpopular ideas or information or manipulate the public debate through coercion rather than persuasion ..."--in other words, to exercise viewpoint discrimination.

Planned Parenthood, at 572 citing *Sons of Confederate Veterans* at 624 (quoting *Rosenberger,* 515 U.S. at 828, 115

S.Ct. 2510 and *Turner Broadcasting Sys., Inc. v. F.C.C.*, 512 U.S. 622, 114 S.Ct. 2445, 129 L.Ed.2d 497 (1994)).

Thus, the Court finds that plaintiffs' Motion for Partial Summary Judgment shall be **GRANTED** finding that the entire overall policy and practice under which Louisiana makes available certain specially license plates violates the First Amendment and the Motion to Dismiss Keeler's claim filed by defendants shall be **DENIED.**

Planned Parenthood's claims based on Freedom of Speech and the Establishment Clause are brought as alternative claims under the Third Amended Complaint. Because the Court has granted plaintiff's partial summary judgment declaring the entire licensing scheme unconstitutional as it is in violation of the First Amendment as it is not viewpoint neutral, the alternative claims of Planned Parenthood are rendered **MOOT,** and the State's Motion to Dismiss these claims is likewise **MOOT.**

The licensing scheme in Louisiana has no standards, parameters, guidelines or other criteria by which a prestige plate can be issued to an organization or group of like-minded citizens. As a result, the threat of discrimination based on viewpoint invariably must loom over any applicant. The reason for this is that whether or not a license plate is issued is subject to the uncontrolled discretion of the legislature. This Court originally had one issue before it, specifically, the constitutionality of Choose Life Statute, La.Rev.Stat. 47:463.61. As a result of the Fifth Circuit's ruling, the plaintiff has levied a constitutional attack as to the entire prestige licensing scheme which has been successful. Therefore, although not the plaintiff's original intent, the injunction herein applies to the future issuing of all such licenses.

The Louisiana legislature has the option of enacting a scheme which could contain "narrow, objective and

definitive standards to guide the licensing authority." *Planned Parenthood,* 236 F.Supp.2d 564, 573 (D.S.C.2002) citing the Supreme Court *Forsyth County v. Nationalist Movement,* 505 U.S. 123, 134, 112 S.Ct. 2395, 120 L.Ed.2d 101 (1992) and cases cited therein. With such a scheme, an applicant for a license plate would not be as readily vulnerable to viewpoint discrimination and the guidelines could be used to vet for reasons other than viewpoint, such as obscenity, confusion to law enforcement authorities, duplication and the like. This choice remains with the legislature as it is beyond the authority of this Court to order the Legislature to issue a "Choose Choice" license plate.

The Court emphasizes that the Louisiana legislature is of course free to speak, but it cannot prevent its citizens from voicing opinions with which the State disagrees in a forum of its own creation unless there is a compelling state interest to do so. Although a debate over a license plate may seem quotidian in the spectrum of human events, state censorship of private speech is inimical to a viable and dynamic democracy. State control of private speech is an insidious incursion into the bedrock of freedom. It must not be permitted and is not permitted under our Constitution.[12]

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[12] Immediately prior to the Court's entering its Order and Reasons and Judgment in this case, it received a letter from the State of Louisiana, Department of Justice, Assistant Attorney General Roy a. Mongrue, Jr., who represents the defendants in this matter. In it, he brought the Court's attention to a recent Fifth Circuit case, *American Civil Liberties Union Foundation of Louisiana v. Bridges,* 334 F.3d 416 (5th Cir.2003). The Court also received a written response in letter form from plaintiffs' attorneys.

The cited case involves the application of the Tax Injunction Act, 28 U.S.C. § 1341, to certain legislative exemptions relating to sales and use taxes granted to churches and synagogues. None of the pleadings before the Court in any way implicate the Tax Injunction Act. Nor was it even obliquely referenced in oral argument. There was no motion requesting

In addition, pursuant to 42 U.S.C. § 1983, plaintiff is entitled to attorneys' fees. Plaintiff shall submit its motion for attorneys' fees by August 8, 2003, along with supporting documentation. No notice of hearing is required with said filing. Defendants shall reply by August 22, 2003. In the event that either party wishes to have an evidentiary hearing on the matter after briefs are submitted, such a request shall be made by August 29, 2003. Otherwise the matter shall be deemed submitted on the papers. Accordingly,

IT IS ORDERED that judgment for plaintiff Doreen Keeler and against defendants Richard L. Stalder, Secretary

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permission to file additional briefs or to amend defendants' pleadings. Regardless of these deficiencies, the Court has reviewed the noted case and treats it as having been properly raised. It finds that the case at bar does not even remotely relate to the Tax Injunction Act. The legislation at issue was enacted at the request of the interested groups who desired special license plates. Under no circumstances are the fees charged for the cost of the plates in any way to be considered a "tax." *Neinast v. State of Texas*, 217 F.3d 275 (5th Cir.2000). This charge is called a "fee" in the specific statute authorizing "Choose Life" plates. La.Rev.Stat. 47:466.61 and the word "fee" is used throughout the prestige license plate statutes. Citizens do not impose taxes on themselves and this late citation borders on the absurd.

of the Louisiana Department of Public Safety and Corrections and John N. Kennedy, Treasurer of Louisiana, be entered, and the named defendants are hereby **ENJOINED** from enforcing or implementing La.Rev.Stat. §§ 47:463.3 and 47:463.7-463.16, 47:463.18, 47:463.20, 47:463:22-63.34, 47:463.36-463.110.

United States District Court
for the Eastern District of Louisiana.

No. CIV. A. 00-2237.

Russell J. Henderson; Doreen Keeler; Robert H. Loewy and Greater New Orleans Section of the National Council of Jewish Women,
Plaintiffs,
v.
Richard J. Stalder, Secretary, Department of Public Safety and Corrections; John Kennedy, State Treasurer,
Defendants.

August 27, 2003.

ORDER AND REASONS

DUVAL, District Judge.

Before the Court is "Defendants' Motion, Pursuant to F.R.C.P. Rule 62[1] for Suspension or Stay of Preliminary Injunction" ("Motion for Stay") (Doc. No.68), filed by Richard L. Stalder, Secretary of the Louisiana State Department of Public Safety and Corrections, and John Kennedy, Treasurer of the State of Louisiana (referred to hereafter as "the State"). Having reviewed the pleadings, memoranda and the relevant law, the Court finds no merit in

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[1] Rule 62(c) provides:

When an appeal is taken from an interlocutory or final judgment granting, dissolving, or denying an injunction, the court in its discretion may suspend, modify, restore, or grant an injunction during the pendency of the appeal upon such terms as to bond or otherwise as it considers proper for the security of the rights of the adverse party.

Fed.R.Civ.P. 62(c).

that motion.

Also before the Court is Plaintiffs' Motion for Attorneys' Fees and Costs. As the State has not responded as previously ordered to the motion and as the filing of the Motion to Stay has caused plaintiffs to incur yet more attorneys' fees, the Court will order a new briefing schedule. However, it will first take up the Motion for Stay.

MOTION FOR STAY

The Court would note at the outset, that this motion contains blatant mischaracterizations of the Court's July 8th ruling and demonstrates an unwillingness on the part of the State to understand the basic construct of the United States Constitution and the Bill of Rights. To imply that this Court has ignored the teachings of the Supreme Court and has somehow manipulated the law, as the State has suggested in its memorandum, is specious at best.[2] This Court is dedicated to preserving the rights of **all** people as defined by the laws of this land; it is not only this Court's duty, but its sacred obligation as set forth in the oath of office that each federal judge takes upon taking up his judicial duties. Indeed, one of the most self-evident rights under the Constitution is the right for people to disagree and to engage in animated dialogue to that end. However, ad hominem attacks have no place in this endeavor and indeed minimize the very basis for the nation's strength-discourse and debate.

It has never been the intention of this Court to arbitrarily

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[2] The State wrote, "The reasons for these special prestige license plates have nothing to do with speech or expression, and defendants do not know why this Honorable Court enjoined them." (Memorandum, p. 4, n. 2). If these plates have "nothing to do with speech" why has the State maintained the drumbeat of "Government Speech" with respect to the plates for over two years. This kind of disingenuous posturing is untenable, counter-intuitive and wasteful.

deprive citizens of this state of their right to express themselves through their purchasing of specialty license plates. Indeed, all that this Court has held is that the State Legislature cannot arbitrarily **prevent** persons who hold views contrary to the majority in the legislators from exercising the same rights as veterans, conservationists and the like. This Court's July 8th ruling was not issued out of mean-spiritedness or indiscriminate fiat. The Court simply is trying to protect **all citizen's** rights under the First Amendment of the United States Constitution, as is its sworn duty. Any characterization contrary to these tenets is simply untrue and verges on demagoguery which disserves the citizens of this State.

The Supreme Court of the United States has recognized that license plates constitute private speech. *Wooley v. Maynard,* 430 U.S. 705, 97 S.Ct. 1428, 51 L.Ed.2d 752 (1977). As this Court has noted in the instant case:

> In reaching that decision [in the *Maynard* case,] the Supreme Court found that New Hampshire in effect required that the Maynards use their private property as a "mobile billboard" for the State's ideological message or suffer a penalty since an individual would have to have such a plate on his personal property in order to drive. As such, the Court reasoned that "The State 'invades the sphere of intellect and spirit which is the purpose of the First Amendment to our Constitution to preserve from all official control.' " *Id.* at 715, 97 S.Ct. at 1435. The Court continued, "The First Amendment protects the right of individuals to hold a point of view different from the majority and to refuse to foster, in the way New Hampshire

> commands, an idea they find morally objectionable." *Id.* at 715, 97 S.Ct. at 1436. Thus, the Supreme Court has held that license plates constitute speech for purposes of this analysis.

Henderson v. Stalder, 265 F.Supp.2d 699, 713 (E.D. La. 2003).

Plainly stated, by creating specialty license plates, the State has created a forum for such speech. As the Court previously analogized, it is as if the State of Louisiana has built a hall in which people are welcome to express their views. However, the legislature has created a test for any group to gain admittance into that hall. In order to be able to speak, (1) a legislator must sponsor a bill authorizing the plate, and (2) that bill must pass by a majority in the legislature. As such, the hall in essence has been turned into a club for popular groups. The legislature can simply refuse admittance to an unpopular applicant by refusing to sponsor or pass a bill for an unpopular group. The realities of the political process are at play and thus wreak havoc on the First Amendment's application to speech in the hall-that is the license plate. Legislators who are afraid of taking politically unpopular positions, such as being pro-choice, are not willing to stand up for the rights of an individual who is a member of an "unpopular" group, even though that individual has a right under the United States Constitution to enter that hall, or in this case, express themselves in the forum of the license plate which the State has allowed as a place for private expression.

All that is required to rectify this unconstitutional restraint on free speech is for the Louisiana legislature to create a non-discriminatory method by which groups of citizens may apply for license plates and participate in speaking in the hall. As the Court made reference in its July 8th decision, South Carolina has enacted a statute that

permits nonprofit organizations to apply for a license plate promoting their group. In that instance a group must submit proof of the group's nonprofit, tax-exempt status; 400 prepaid applications or a $4000 deposit must be made; camera-ready artwork must be submitted and a marketing plan for the sale of the plate must be approved by the Department of Public Safety. This method provides a way for groups to participate in speaking in the hall without being "popular" and protects the state's need to regulate the licensing of vehicles.

This Court cannot allow the State to create barriers to free speech in the context of a forum. To argue that these specialty license plates constitute "government speech", which is the State's primary basis for preventing "unpopular" groups from participating in the license plate forum, belies the obvious context in which these plates come into existence. Indeed, the hue and cry of persons who have these plates, who want to express their views and are outraged that they may be deprived of that right, demonstrates vividly that these plates are about private speech, not government speech.

One of the most important tenets upon which this country was founded was to balance the rule of the majority and protect the rights of the minority. The federal courts historically have been the place to resolve such issues. As written by John Adams, "Mankind will in time discover that unbridled majorities are as tyrannical and cruel as unlimited despots." David McCullough, *John Adams,* (Simon and Shuster 2001) at 443-44.

The Court will now address the particular arguments lodged by the State.

Standard to Apply Under Rule 62(c).

The standard this Court must apply to determine whether such a stay should be granted, as this Court noted the last

time the State moved to stay this Court's decision is as follows:

> In order to obtain a stay of an injunction pending appeal under Fed.R.Civ.P. 62, the moving party must show: (1) a likelihood of prevailing on the merits on appeal; (2) that it will suffer irreparable injury from the denial of the stay; (3) that other parties will not be substantially harmed; and (4) that granting the stay will serve the public interest. *Wildmon v. Berwick Universal Pictures,* 983 F.2d 21, 23 (5th Cir.1992). Additionally "the stay of an equitable order is an extraordinary device which should be granted sparingly." *United States v. State of Louisiana,* 815 F.Supp. 947, 948 (E.D.La.1993) (quoting *United States v. Texas,* 523 F.Supp. 703, 723 (E.D.Tex.1981)).

Henderson v. Stalder, 2000 WL 1875987, *1 (E.D.La.2000). The State has suggested that because this Court's decision is subject to *de novo* review, the likelihood of success is greater. It is irrelevant[3] to this Court's analysis that the United State Court of Appeals for the Fifth Circuit will use a *de novo* review standard.

The State raises the following arguments to persuade this Court to enjoin its decision with respect to the first criteria-likelihood of success on the merits:

> (1) that the Court lacked subject matter jurisdiction to adjudicate the matter based on the Tax Injunction Act, 28 U.S.C. § 1341;

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[3] The State's argument in this regard is puerile. This Court is charged with the responsibility of making the determination of whether there is a substantial likelihood of success on the merits. The standard of review has absolutely no bearing on this Court's analysis.

(2) that the summary judgment has little likelihood of being affirmed on appeal since certain mixed questions of law and fact were resolved in favor of plaintiff Keeler without any supporting evidence;

(3) that this Court was wrong in finding that plaintiff Keeler had standing to enjoin all the license plates;

(4) that the license plates constitute state speech and as such the Court erred in its application of the law; and

(5) that the Court misapplied the rationale in *Sons of Confederate Veterans, Inc. v. Commissioner of Virginia Dept. of Motor Vehicles*, 288 F.3d 610 (4th Cir.2002).

As to the other three considerations, the State contends that there is irreparable harm because the efficient administration of Louisiana vehicle registration license tax "is being thoroughly disrupted." As to the public interest prong, the State again relies on the applicability of the Tax Injunction Act and again notes the alleged disruption of the efficient administration of the state's tax system. Finally, the State contends that Keeler will not be harmed because "the injunction enjoins others' speech and gives no relief for her to express her own speech."

The Court will now turn to the first criteria.

A. LIKELIHOOD OF SUCCESS ON THE MERITS:

(1) The Tax Injunction Act

The State now claims and briefs the Court properly on the issue that this Court lacks jurisdiction to enjoin the State from issuing specialty license plates based on the Tax Injunction Act, 28 U.S.C. § 1341. Unfortunately, the State neither raised this claim in its opposition to the Motion for Summary Judgment, nor mentioned the issue at oral argument. Instead, this argument was first raised by letter

sent a week after oral argument. Nonetheless, the Court as noted in its previous decision finds that the Tax Injunction Act has no application in this matter.

The Tax Injunction Act states that, "[t]he district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such a state." 28 U.S.C. § 1341. The Fifth Circuit employs a bifurcated analysis in determining whether the Tax Injunction Act bars jurisdiction in a specific case. *See Home Builders Assoc. of Mississippi, Inc. v. City of Madison*, 143 F.3d 1006, 1010 (5th Cir.1998). First, the court determines whether the law imposes a tax or merely a regulatory fee. *Id.* The Tax Injunction Act only prevents the court from exercising its jurisdiction if the law imposes a tax. *Id.* Second, even if the law imposes a tax, a district court may not exercise jurisdiction if the state court can provide the plaintiffs with a "plain, speedy, and efficient remedy." *Id.*

The line distinguishing a tax from a fee is often a blurry one, but courts use the following guideposts to distinguish one from the other:

> the classic tax sustains the essential flow of revenue to the government, while the classic fee is linked to some regulatory scheme. The classic tax is imposed by a state or municipal legislature, while the classic fee is imposed by an agency upon those it regulates. The classic tax is designed to provide a benefit for the entire community, while the classic fee is designed to raise money to help defray an agency's regulatory expenses.

Id. at 1011.

The State argues that this Court made contradictory

findings when it stated that the license plates produce revenue, but at the same time it noted that the statutes involved used the word "fee" instead of tax so that the Tax Injunction Act did not apply. The State then stated in its memorandum, "It is submitted that this Honorable Court cannot have it both ways at the same time."[4] Indeed, the Court has not sought to "have it both ways"; the statutes involved the imposition of fees, and no amount of double-speak on the part of the State will change this Court's perception.

To begin, the word "revenue" does not mean exclusively money raised by a tax; fees produce revenue as well. In addition, the State has taken the words of this Court out of context; the full paragraph states and underscores why the statutes involved are not subject to the Tax Injunction Act:

> Under these criteria, looking at the purpose of the prestige license plate scheme in place in Louisiana, it is pellucid that its purpose is likewise to produce revenue while allowing, on special plates authorized for private organizations, for the private expression of various views. Indeed, much of the revenue produced is funneled to the organizations themselves in the Louisiana program. Many of the plates involved require a minimum number of purchasers prior to production demonstrating that what defendants contend is the Government's speech, is only spoken if

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[4] Again, the language used by the State is offensive and thoroughly unprofessional. The Court would suggest to counsel a more appropriate approach would be "We respectfully suggest that the Court's opinion is inconsistent." The Court does not "want" anything other than to fairly dispense justice and insure the protection of all people's Constitutional rights.

> someone else pays for it. Finally, as noted, a number of Louisiana prestige plates require proof of membership in the organization prior to being able to purchase same-underscoring the personal nature of the message of the plate.

Henderson v. Stalder, 265 F.Supp.2d at 716.

Furthermore, a review of the statutory scheme demonstrates the true nature of these statutes. To begin, a Motor Vehicle License Tax is imposed under the Louisiana Constitution art. VII, § 5. The statute that implements that provision is found at La.Rev.Stat. 47:452 entitled, "Designation of tax" which states, "The tax levied in this Chapter shall be known as the Vehicle Registration License Tax." Part II of this Chapter is then entitle "Levy of Registration License Fee or Tax". Section 461 provides, "There shall be paid to the commissioner, for the registration and licensing by the State of Louisiana of all vehicles and motor vehicles, an annual registration license fee or tax according to the classifications and rate hereinafter set forth." La.Rev.Stat. § 47:461. The appropriate rates for individual trucks and trailers is found at La.Rev.Stat. § 47:462, and the rates for most passenger cars is found at La.Rev.Stat. § 47:463. That statute includes some exemptions. This Court's ruling did not in any way effect or enjoin the collection of revenue under those statutes.

This Court's ruling dealt solely with those statutes which concern specialty license plates. The scheme is set out in full in the Court's prior ruling. Using the State's own description of the various specialty license plate statutes and the Court's own review of this hodge-podge of statutes, the Court recognizes a variety of categories of plates characterized by the funds generated. There are, *inter alia,* (1) a group of statutes which exempts the owner from paying the regular

registration license tax, or any other fee when obtaining the specialty plate; (2) a group with a special one-time fee in addition to the regular registration license tax which apparently goes into the state general fund; (3) a group with a specialty plates for antique cars with concomitant fees; and (4) a group where the "charge" for the special license plate is the same as the regular motor vehicle registration license fee with no "one-time fee"; and (5) a host of statutes where fees in addition to the actual vehicle tax are assessed for the purpose of raising additional funds for various organizations including State "funds", private charities, and alumni organizations.

As such, the Court has not enjoined the collection of the regular registration license tax. It is only the collection of these additional fees, which are designated as fees, that has been placed on hold. For the most part, these fees are the cost for these individuals to engage in speech.[5] Moreover, the Louisiana Constitution provides, "The levy of a new tax, an increase in an existing tax, or a repeal of an existing tax exemption shall require the enactment of a law by two-thirds of the elected members of each house of the legislature." La. Const. art. VII, § 2. There is no indication that any of these measures had to be enacted by super-majorities. Furthermore, under the Constitution, bills concerning "the levying or authorizing of a new tax, increasing an existing tax, legislating with regard to tax exemption, exclusions, deductions, reductions, repeal or credits" must occur during even-numbered years. La. Const. art III, § 2(A)(3). A general review of these statutes indicates they were not passed in those years.

The case at bar is not analogous to *Schneider Transport,*

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[5] It is unfortunate that this Court's ruling has affected future exemptions from the regular registration license tax; however, the First Amendment and the requirements of free speech mandate such action

Inc. v. Cattanach, 657 F.2d 128 (7th Cir.1981). The fees involved there concerned registration fees for trucks used in interstate commerce under the International Registration Plan wherein the plaintiff Schneider who had previously registered its trucks in Wisconsin, registered them in Illinois at a substantial savings. However, Wisconsin found that the Illinois address was in essence a sham and notified Schneider that it was improperly using Illinois as its base and sought $800,000 in fees, even though Schneider had already paid to Illinois about $245,000 in fees for the registration. The Seventh Circuit in that case relied on Wisconsin law to determine whether the registration fee was a tax subject to the Tax Injunction Act. It did not use the traditional test employed in the Fifth Circuit.

Using the criteria in *Home Builders,* this Court has not enjoined the collection of what is truly the vehicle registration tax. Rather, it has stopped the collection of fees which a person voluntarily agrees to pay for the privilege of expressing his views. Indeed, the State in many instances serves as a collection agency for private charities. These fees simply do not sustain the essential flow of revenue to the government; rather, these fees are linked to some regulatory scheme-if not a charitable scheme. While these statutes have been passed by the legislature, they do not appear to have been passed for primarily revenue producing measures from the constitutional analysis above. In addition, these fees cannot in any manner be construed to be for the benefit for the entire community, rather they are for the benefit of those funds and charities that profit from the sale of these plates. Furthermore, it would be the first time in this Court's memory that people have actively pursued and volunteered to be subjected to a tax as those who seek specialty plates would be seen to be doing if the Court accepted the State's position. Thus, there is no likelihood of success on the merits based on the Tax Injunction Act.

In *Neinast v. State of Texas,* 217 F.3d 275 (5th Cir.2000), the Fifth Circuit cited *San Juan Cellular Telephone Company v. Public Service Commission,* 967 F.2d 683, 685 (1st Cir.1992) (Brewer, C.J.) for the following description of the difference between a fee and a tax by describing the "distinction as a spectrum with the paradigmatic fee at one end and the paradigmatic tax at the other": "The classic fee is imposed (1) by an agency, not the legislature; (2) upon those it regulates, not the community as a whole; and (3) for the purpose of defraying regulatory costs, not simply for general revenue-raising purposes." *Id.* at 278.

Using the *Neinast* construct, the first factor, whether the charge is imposed by the legislature or an agency, suggests that the charge is a tax because it is imposed by the Louisiana legislature. However, the second factor, on whom the charge is imposed, demonstrates that the charge is a fee. The regular registration license tax remains the same or is waived and exempted with respect to all of the specialty plates. Thus the Court's ruling does not effect the tax that is extracted by the purchase of any specialty license plate. Rather the added charges are imposed on a narrow class of persons-purchasers of specialty license plates, and even more indicative-that charge varies with each license plate. The charge is certainly not assessed against the "community as a whole." Moreover, the charge is not even uniform with respect to the community of specialty license plate purchasers. Finally, to the extent that moneys are then "deposited" into the general fund, if the costs of the specialty license plate programs are paid out of the general highway fund, then charges paid back into the fund do help defray the specialty license plates themselves. To argue otherwise would require that no charges would be fees unless they are funneled into a segregated account. *Neinast* 217 F.3d at 279.

(2) Questions of Fact

The state contends that there were "certain mixed questions of law and fact that were resolved in favor of plaintiff without any supporting evidence whatsoever." It argues that (1) Keeler's statement contained in the Original Complaint is inadmissible hearsay, (2) that there is no evidence that any license plate received a "sufficient number of orders to be established", (3) that there is no evidence that anyone ever actually put any of these license plates on their private motor vehicles; (4) that there is no "proof" that Louisiana "ever invited private speakers to formulate their own speech for any special prestige license plate" or that "any particular organization played any part or role in either the authorization or final publication of any of these enjoined license plates."

To begin, the State never argued that there was an insufficient record upon which the Court could rule on the subject motion. If the State had espoused this belief, there is a mechanism by which it could have required evidence to have been adduced, that is Fed. R. Civ. Pro 56(f) wherein the Court would have granted the parties time to conduct discovery and create the factual underpinnings necessary for the Court to rule on these motions. This procedural request was not raised.

In addition, only **genuine** questions of material fact can preclude the entry of judgment.[6] The nonmoving party must come forward with "specific facts showing that there is a *genuine issue for trial.*" *Matsushita Elec. Industrial Co. v.*

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[6] Rule 56(c) of the Federal Rules of Civil Procedure provides that summary judgment should be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed.R.Civ.P. 56(c).

Zenith Radio Corp., 475 U.S. 574, 588, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986) (emphasis supplied); *Tubacex, Inc. v. M/V Risan*, 45 F.3d 951, 954 (5th Cir.1995). For the State to contend that there is a genuine question of whether prestige plates are on cars in Louisiana or whether groups have approached the legislature to obtain plates is patently absurd. The Court takes judicial notice of those facts as such license plates are evident to anyone who drives. Furthermore, to the extent that these "facts" were not relevant for the inquiry required under the law (the number of requests for plates), the substantive law determines materiality of facts and only "facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). This argument has no merit. Furthermore, it is unconscionable for the State to raise this argument now when it was given every opportunity to have a full and fair hearing. Finally, the State is put on notice that this argument may well violate Rule 11(b)(4).

(3) Keeler Does Not Have Standing

The State in its opposition to the plaintiffs' Motion for Summary Judgment never clearly raised in its written briefing a standing argument as to Keeler. Indeed at page 4 of the state's Opposition to the Motion for Summary Judgment (Doc. 61), the State penned, "Thus, all claims in the Second Amended Complaint must be dismissed, and plaintiff Keeler is only allowed to amend her complaint to challenge the state's overall policy and practice of issuing specialty license plates." Furthermore, the very language cited from the Fifth Circuit's opinion to the Court for this new proposition-that being the Fifth Circuit's finding that the Court's first injunction "merely function[ed] to prevent other motor vehicle drivers from expressing their choose-life point of view" and was the basis for the initial dismissal for lack of

standing-was addressed expressly in the Fifth Circuit's final mandate which stated unequivocally:

> The court's previous order, entered September 24, 2002, denying appellees' motion to stay the mandate pending petition for writ of certiorari, is hereby VACATED; the mandate issued herein is RECALLED; the court VACATES its order of August 9, 2002 denying appellees' petition for rehearing en banc, and substitutes the following response to appellees' motion for rehearing en banc:
>
> The petition for rehearing en banc is DENIED. The case is remanded to the district court with instructions to dismiss the case for lack of standing unless the plaintiff Keeler amends her petition within a reasonable time to challenge the state's overall policy and practice of issuing specialty license plates. Judge Davis would grant rehearing for reasons stated in his dissent.

(Doc. 54). Thus, the Fifth Circuit has specifically instructed this Court that Keeler has standing with the amendment filed.[7]

(4) The License Plates Constitute State Speech and as such the Court erred in its Application of the Law

The State regurgitates the exact same arguments it made and this Court specifically rejected concerning the license

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[7] The State in its oral argument discussion contended that the mandate as written did not mean that there was standing in the event that Keeler filed the amended complaint as instructed. Nonetheless, the Court finds that the clear words of the mandate dictate that there is standing for Keeler.

plates constituting "state speech". This Court thoughtfully analyzed the cases cited for this proposition and rejected these arguments in its decision, *Henderson v. Stalder*, 265 F.Supp.2d at 714-17. The Court is reminded of George Orwell's "double-speak" in *1984*. The State apparently believes that if it continues to state that these license plates constitute state speech, that it will transmogrify into something it simply is not. The State has created a forum and it must allow all groups, popular and unpopular, to speak.

(5) The Court Misapplied the Rationale in Sons of Confederate Veterans, Inc. v. Commissioner of Virginia Dept. of Motor Vehicles, 288 F.3d 610 (4th Cir.2002)

In arguing that this Court "misapplied" the *Sons of Confederate Veterans* case, the State states that "a careful study of the denial of the suggestion for rehearing *en banc* [in that case] reveals a rejection of the kind of judgment entered in this case." (Opposition to Motion for Summary Judgment at 12). However, the State fails to recognize that rehearing was denied by the Fourth Circuit and the unanimous opinion of the three panel court remains the law of the case.

Indeed, the *Sons of Confederate Veterans* clearly stands for the proposition that speech on specialty license plates is private, rather than government speech. Moreover, that case dealt with an even more slippery slope that the instant case. In that case, the Virginia legislature did not prevent the Sons of Confederate Veterans from having a license plate; the legislature had passed an act allowing their production. Instead, in the enabling legislation, the Virginia legislature sought to prevent the group's logo, the Confederate flag which was a cause for concern to the members of the legislature as the Confederate flag is a symbol of slavery to some and certainly a reminder of a most turbulent time in the history of the United States to all-from being used on the

license plate. Thus, returning to the Court's metaphor, Virginia sought to impose upon the Sons of the Confederacy, in essence, a dress code, in order to gain admittance into the hall. As such, there was a more nuanced permutation of the private speech versus government speech conundrum present in that case. In the case at bar, to return to the metaphor, no matter how the plaintiffs are dressed, they are not allowed admittance to the hall.

The Court will now address the other three criteria with respect to Rule 62(c) stay.

B & C. IRREPARABLE HARM AND PUBLIC INTEREST

The only argument made by the State, is that there is irreparable harm to the State and the harm to public interest is based on the State's argument that the "efficient administration of Louisiana's vehicle registration license tax is being disrupted." As the Court has found that the moneys involved for the most part are fees, not taxes, these arguments are without merit.

Interestingly, the State never claims harm from it being prevented from speaking. What had been the leitmotif of its position has vanished. Nonetheless, the Court is painfully aware there is confusion with respect to the effect of this ruling on license plates that have already been issued. The Court stated in its reasons that it was enjoining the future issuing of all such licenses-it did not state, nor did it ever intend to prevent the renewal of any plates already issued. Thus, to the degree that specialty license plates have already been issued to persons, it is not the Court's intention to deprive those persons their voice. Accordingly, to the extent that the State may need to take any action with regard to the renewal or transfer of existing plates, it is not so enjoined.

D. HARM TO KEELER

Finally, the State contends that Keeler will not be harmed because "the injunction enjoins others' speech and gives no relief for her to express her own speech." However, the Fifth Circuit has recognized that loss of First Amendment freedoms, even for minimal periods of time, constitute irreparable injury. *Ingebretsen v. Jackson Public School District,* 88 F.3d 274 (5th Cir.1996), *citing Elrod v. Burns,* 427 U.S. 347, 373, 96 S.Ct. 2673, 2689, 49 L.Ed.2d 547 (1976). This argument fails as well.

CONCLUSION

Based on the foregoing, the Court finds that there is no cause to stay the enforcement of its judgment. Accordingly,

IT IS ORDERED that Defendants' Motion, Pursuant to F.R.C.P. Rule 62[8], for Suspension or Stay of Preliminary Injunction (Doc. No. 68) is **DENIED.**

PLAINTIFFS' MOTION FOR ATTORNEYS' FEES AND COSTS

As noted in its July 8th opinion, pursuant to 42 U.S.C. § 1983, plaintiff is entitled to attorneys' fees. Plaintiffs submitted as ordered on August 8, 2003 its motion for attorneys' fees and costs in which they seek $153,034.91. However, the State was to have replied by August 22, 2003.

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[8] Rule 62(c) provides:

When an appeal is taken from an interlocutory or final judgment granting, dissolving, or denying an injunction, the court in its discretion may suspend, modify, restore, or grant an injunction during the pendency of the appeal upon such terms as to bond or otherwise as it considers proper for the security of the rights of the adverse party.

Fed.R.Civ.P. 62(c).

To date, an opposition to that motion has not been filed. Accordingly,

IT IS ORDERED that plaintiffs supplement their motion to include the attorneys' fees and costs incurred because of the Motion to Stay no later than September 5, 2003. The State shall file its opposition to both pleadings no later than September 15, 2003. The failure to file such a pleading will result in the plaintiffs' motion being considered to be unopposed. In the event that either party wishes to have an evidentiary hearing on the matter after briefs are submitted, such a request shall be made by September 22, 2003. Otherwise the matter shall be deemed submitted on the papers.

United States Court of Appeals,
For The Fifth Circuit.

Russell J. HENDERSON; et al.,
Plaintiffs,

Doreen Keeler; Planned Parenthood of Louisiana, Inc.,
Plaintiffs-Appellees,

v.

Richard STALDER, Etc.; et al.,
Defendants,

Richard Stalder, Secretary, Department of Public Safety and Corrections; John Kennedy, State Treasurer,
Defendants-Appellants.

No. 03-30699.

Dec. 21, 2005.

ON PETITION FOR REHEARING EN BANC

(Opinion April 13, 2005, 5th Cir., 2005, 407 F.3d 351)

Before JOLLY, JONES and PRADO, Circuit Judges.

PER CURIAM:

Treating the Petition for Rehearing En Banc as a Petition for Panel Rehearing, the Petition for Panel Rehearing is DENIED. The court having been polled at the request of one of the members of the court and a majority of the judges who are in regular active service not having voted in favor (FED. R. APP. P. and 5TH CIR. R. 35), the Petition for Rehearing En Banc is DENIED.

W. EUGENE DAVIS, Circuit Judge, Dissenting, joined

by KING, Chief Judge, and PATRICK E. HIGGINBOTHAM, WIENER, RHESA HAWKINS BARKSDALE, BENAVIDES, CARL E. STEWART and DENNIS, Circuit Judges.

Because it is clear to me that the panel's resolution of this case is wrong, I dissent from the court's refusal to take this case en banc.

I fully understand the panel's desire to avoid deciding a case that implicates anything that touches on abortion. The panel's solution is to call the charge for the specialty license plate a "tax" thus triggering the TIA and divesting the federal courts of jurisdiction to enjoin the specialty license plate program. Because the charge in question is not a tax, we should decide the constitutional issue presented to us.[1]

I.

Background

The plaintiffs sued to challenge the Louisiana speciality license plate program as representing unconstitutional viewpoint discrimination. The suit's focus is on the specialty plate with the message "Choose Life". The program for

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[1] In the recent Fourth Circuit case *Planned Parenthood v. Rose,* the panel (Luttig, Michael & Gregory) enjoined the state officials from issuing "Choose Life" license plates in a scheme similar to the one in place in Louisiana. Although each panel member wrote separately and assigned slightly different reasons to support his conclusion, no judge dissented from the central holding, affirming the issuance of the injunction. Also, and more significant to the point under discussion, no judge on the panel suggested that the court had no jurisdiction because the extra flow through charge for the plate was a tax. In fact, there is no mention of the TIA in any of the opinions.

Also, in our case, the state raised this jurisdictional argument in the district court for the first time after we remanded the case to the district court following the initial appeal.

Louisiana specialty license plates is codified at La. R.S. 47:463.6 et seq. There is no general provision authorizing the issuance of the plates.[2] Instead individual statutes authorize each specialty plate by separate legislative act. These statutes have been adopted to benefit and recognize over 100 individual causes and organizations. The individual statutes authorizing these license plates vary as to cost of the plate and how and to whom the proceeds the State receives from the plate are distributed. A Louisiana resident who purchases a "specialty" license plate, generally pays three distinct charges: (1) The charge for the standard license plate based on the value of the vehicle; (2) an additional handling charge (usually $3.50); and (3) the additional pass-through payment ordinarily collected by the state and forwarded to the organization designated as the beneficiary of the particular specialty plate statute. We are only concerned with the third charge. The panel held that this charge is a tax and that the TIA precludes a federal court from entertaining a suit to enjoin collection of this tax. The sole issue, therefore, is whether this flow-through charge is a tax.

II.

Is the Extra Charge a Tax?

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[2] La. R.S. 47:463(3) governs the design of specialty plates. It states that "all special prestige license plates issued in accordance with R.S. 463.6 et seq. shall contain the uniform alpha-numeric series accompanied by a symbol or emblem representing the organization requesting such a plate." This section also establishes one aspect of the fee for the issuance of specialty plates and sets minimum requirements. "All prestige license plates issued after August 15, 1999, shall include a handling charge of three dollars and fifty cents to offset the administrative costs of the department for the issuance of such plates. No prestige plate shall be established after August 15, 1999, until the department has received a minimum of one hundred applications for such plate." La. R.S. 47:463(3).

We should first be clear about the nature of the charge the panel calls a tax.

1. The payments in question are transmitted to the state *voluntarily* by Louisiana citizens to obtain a specialty license plate displaying the cause or institution close to the purchaser's heart rather than the standard Louisiana license plate. The entire system is driven by private citizens' desire to obtain recognition on a state license plate for their cause.

2. Under the Louisiana statutory scheme, the state treasury is generally not the intended beneficiary of the payments. Rather the state is simply a conduit which passes the funds on to the organization or cause identified on the license plate.

The TIA does not apply, of course, if the state charges in question are not taxes for purposes of the TIA. Much of the case law and commentary regarding the TIA relates to methods of distinguishing a "regulatory fee" from a "tax". The classic test relied on by the panel for distinguishing a fee from a tax is stated as follows:

> A classic tax sustains the essential flow of revenue to the government, while the classic fee is linked to some regulatory scheme. A classic tax is imposed by a state or municipal legislature, while the classic fee is imposed by an agency upon those it regulates. The classic tax is designed to provide a benefit for the entire community, while the classic fee is designed to raised money to help defray the agency's regulatory expenses.

Home Builder's Ass'n of Miss. Inc. v. City of Madison, Miss., 143 F.3d 1006, 1011 (5th Cir.1998). Stated differently, regulatory fees are charges imposed "(1) by an agency, not

the legislature; (2) upon those it regulates, not the community as a whole; and (3) for the purpose of defraying regulatory costs, not simply for general revenue-raising purposes." *Neinast v. Texas,* 217 F.3d 275, 278 (5th Cir.2000).

This test is helpful in distinguishing between a regulatory fee and a tax. But this does not mean that the extra charge for a specialty plate must be one or the other, as the panel assumes. In other words, the panel reasons that the charge is not a regulatory fee so it must be a tax. The reasons the panel gives in support of its conclusion make it clear that it followed this analysis. First, the panel relied on the fact that the fees do not fund regulatory entities or serve a regulatory purpose. (Slip op. at 2234). Addressing the district court's conclusion that the variable charges for specialty plates do not benefit the community at large because they are "linked to some regulatory scheme--if not a charitable scheme", the panel states:

> While these features of the specialty plate program--the variations in charges and use of funds collected--set it apart from more traditional funding mechanisms, however, they do not render the charges equivalent to regulatory fees outside the TIA. The additional charges "regulate" nothing; they defray no costs of the program itself, as those costs are embodied in the separate minimal handling fee.

(Slip op. at 2235). The panel concludes that because the charges do not "constitute regulatory fees, we are persuaded that the additional charges must be characterized as taxes." *Id.* In the cases the panel relies on, the courts have narrowed the selection to either a tax or a regulatory fee. In such a case it makes sense to say because the charge is not a regulatory

fee it is a tax or conversely it is a regulatory fee so it is not a tax. But it is simply not the law that all payments to the state must be regarded as either taxes or regulatory fees.

Judge Wiggins speaking for the Ninth Circuit in *Bidart Bros. v. The California Apple Com'n,* 73 F.3d 925 (9th Cir.1996), made the point that the ultimate question is not whether the charge is a "regulatory fee" but rather whether it is a "tax". The plaintiff in *Bidart Bros.* challenged a fee imposed by the defendant commission against all California apple producers of 1/4 cent per pound on all apples produced to promote the sale of California apples. The defendant sought to characterize this charge as a tax and moved to dismiss the suit under the TIA. In response to the Commission's argument that the assessment is a tax because the commission performs no regulatory activities, the court stated:

> Even though distinguishing assessments covered by the TIA from those not covered is often characterized as a determination of whether an assessment is a "tax" or a regulatory "fee," *San Juan Cellular,* 967 F.2d at 685, the ultimate question remains whether an assessment is a "State tax."

Id. at 933. So, the relevant question is whether this charge is a tax and if the answer to this question is no, the TIA does not apply regardless of whether the charge is characterized as a regulatory fee, a charitable donation or something else.

Because no regulatory agency or regulatory scheme is involved in the imposition or collection of the voluntary flow through charges at issue in our case, I agree with the panel that under the *Home Builder's* analysis, they are not regulatory fees. The *Home Builder's* test for distinguishing a regulatory fee from a tax is nevertheless very helpful in

identifying the attributes of a tax:[3]

> (1) a classic tax sustains the essential flow of revenue to the government, [while the classic fee is linked to some regulatory scheme.]
>
> (2) a classic tax is imposed by a state or municipal legislature, [while the classic fee is imposed by an agency upon those it regulates.]
>
> (3) a classic tax is designed to provide a benefit for the entire community, [while the classic fee is designed to raise money to help defray the agency's regulatory expenses.]

The charge at issue here has none of the attributes of a tax set forth in the above test which everyone agrees is controlling. First, the payment in question does not "sustain the essential flow of revenue to the government" because in most cases the funds collected are not retained by the state. Second, the charge is not "imposed" by the legislature; because it is entirely optional and voluntary on the part of Louisiana citizens electing to pay the extra charge for a specialty plate. Third, the payment does not provide a "benefit for the entire community" because the fee from most specialty license plates is dedicated entirely to the specific organization or cause identified on the selected license plate.

It is clear to me that if the charge bears none of the indicia of a tax identified by *Home Builder*'s, it is not a tax whatever else we may call it. The panel, erroneously in my view, holds

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[3] I agree with the panel that federal law controls as to whether a particular charge is a tax under the TIA. It is also clear, however, that federal courts must consult state law to understand the nature of the charge. *RTC Commercial v. Phoenix Bond*, 169 F.3d 448, 457 (7th Cir.1999). [Moores 121.42[2][b]] As the district court observed, (and the panel did not challenge) this charge is clearly not regarded as a tax under Louisiana law. *See Henderson v. Stalder*, 281 F.Supp.2d 866, 873 (E.D.La.2003).

in effect that any payment made to the state is a tax unless it can be characterized as a regulatory fee. This conclusion is inconsistent with the plain language of the TIA, which applies only to divest federal courts of jurisdiction over suits enjoining a *tax* under state law.

III.

For the reasons stated above, I dissent from the court's refusal to grant rehearing en banc.

PATRICK E. HIGGINBOTHAM, Circuit Judge, dissenting, joined by WIENER, Circuit Judge:

I join fully the dissent filed by Judge Davis and add this expression of my disagreement with the premise of the panel's strain to avoid deciding the merits of this case.

The principle of judicial restraint teaches that courts should not decide a case on a constitutional ground when there is an alternative, nonconstitutional ground for decision. Applied in a straightforward fashion, this principle works in a rational tandem with the equally powerful duty of the court to resolve those issues necessary to the decision of a case. The principle of judicial restraint offers no support for the panel's effort to avoid the merits of this case. It did not decide the case on another ground; rather, the effect of the panel's opinion is only to reroute this case to the state courts, an outcome that is sound only if the federal courts are being asked to enjoin a state tax.

Ultimately, it is the Congress that has the power to determine whether this case should be decided by the state courts of Louisiana or the inferior federal courts. The Congress, through the Tax Injunction Act, made that decision, taking the federal hand out of matters of state taxes--matters at the core of state governance. It follows that the

panel's "expansive reading" of "tax," with its narrowing of federal jurisdiction, must have been intended by the Congress, a reading that must also lie comfortably with the backdrop of access to federal courts secured by *Ex parte Young*.[4]

Nothing in the text of the statute or its history can be read as a license to avoid constitutional issues by such an elastic reading of "tax." Without that statutory support, the panel's decision offends *Ex parte Young*. Congress removed the federal injunctive hand from matters of state taxes by removing federal jurisdiction to enjoin them; Congress did not create a side door for federal judges determined to avoid a constitutional question. I fear that the panel's opinion has, unwittingly, donned an ill-fitting political jacket that many may erroneously believe is part of our daily wardrobe. Without that jacket, it is difficult to see Louisiana's license-tag program as a state activity Congress put beyond the injunctive power of the lower federal courts, and we are offered no principled reason for the panel's aggressive run with the statute. I respectfully disagree with the decision that this case should not be considered by the full court.

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[4] 209 U.S. 123, 28 S.Ct. 441, 52 L.Ed. 714 (1908)

U.S. CONSTITUTION, Amendment I provides in relevant part:

Congress shall make no law . . . abridging the freedom of speech . . .

* * * *

U.S. CONSTITUTION, Amendment XIV provides in relevant part:

Section 1. . . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

28 U.S.C. § 1341

("Tax Injunction Act")

Taxes by States

The district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State.

(June 25, 1948, c. 646, 62 Stat. 932.)

LOUISIANA REVISED STATUTES

§ 47-463.3 Special license plates for ham radio station owners or operators

A. Notwithstanding any other provision of law to the contrary, any owner of a motor vehicle who is a resident of the state of Louisiana and who is licensed by the Federal Communications Commission as an owner or operator of a ham radio station, upon application accompanied by proof of ownership of said license issued by the Federal Communications Commission, and upon complying with the state motor vehicle laws relating to registration and licensing of motor vehicles, and upon payment of a one-time fee of twenty-five dollars for each plate, which shall be in addition to the regular motor vehicle registration license fee for number plates, as prescribed in this Chapter, shall be issued a license plate, as prescribed by law for personally used vehicles, upon which, in lieu of the usual allocated number, shall be inscribed the official call letters of the ham radio station owned and/or operated by such applicant as assigned by the Federal Communications Commission and the designation "HAM Operator".

B. The commissioner shall establish such rules and regulations as are necessary to assure compliance with all state license laws relating to use and operation of a personally used vehicle before issuing these number plates in lieu of the regular Louisiana license plate, and all applications for such license plates shall be made to the commissioner. Such rules and regulations shall be made, promulgated and published in accordance with applicable provisions of law, including R.S. 47:1511.

C. The commissioner shall on or before the first day of November of each year, furnish to the sheriff of each parish

in the State of Louisiana an alphabetically arranged list of the names, addresses and call letters inscribed on the license plate of each person to whom a license plate is issued as provided in this section, for public information, inquiry and use in case of emergency.

D. On the application of any person who is a ham radio station owner or operator as defined in this Section, and who is also either a mobility impaired person as defined in R.S. 47:463.4(E) or a disabled veteran as defined in R.S. 47:463.11(A), the secretary shall issue to such applicant a special license plate in accordance with Subsection A of this Section which shall contain the appropriate symbol indicating that the applicant is also a mobility impaired person or a disabled veteran.

E. Oversight review of all rules and regulations promulgated by the secretary under the provisions of this Section shall be conducted by the House Committee on Transportation, Highways, and Public Works and the Senate Committee on Transportation, Highways, and Public Works.

§ 463.8. Antique license plates and license plates for antique motor vehicles and motorcycles

A. (1) The secretary shall establish and issue special license plates for antique motor vehicles, including both pickup trucks and trucks with a gross weight in excess of six thousand pounds, and motorcycles, which are twenty-five years old or older, and shall establish and issue symbols for antique license plates. To obtain such plates and symbols, an applicant shall provide to the secretary a notarized affidavit that the vehicle or motorcycle has not been and will not be materially altered or modified from the original manufacturer's specifications. In addition, such vehicle or motorcycle shall be used primarily for special occasions such as exhibitions, club activities, parades, or other functions of

the public interest, or for necessary testing, maintenance, and storage purposes. The plates shall be available upon application through the applicant's local licensing bureau.

(2) These license plates for antique motor vehicles shall be used in lieu of the regular motor vehicle registration license plates and shall be issued for the life of the vehicle. Such plates may be issued as antique personalized prestige plates for motor vehicles only in the style for personalized prestige plates authorized by R.S. 47:463.2, and such plates shall be used in lieu of the regular motor vehicle registration license plates and shall be issued for the life of the vehicle. The plates shall become permanent to the vehicle on which the plates are issued and shall be transferred with the vehicle if it is sold upon payment of established transfer fees. Alternatively, the secretary may allow antique license plates to be used on an antique motor vehicle if the owner of the vehicle presents the antique license plates to the secretary for approval and the antique license plates were issued by this state in the same year as the model year of the motor vehicle. The license plates issued for antique motorcycles shall be used in lieu of the regular registration license plates and shall be issued for the life of the motorcycle.

B. (1)(a) Prior to August 15, 1999, the fee for issuing the license plates provided for in this Section shall be a one-time fee of fifty dollars for each plate for the special plates for antique motor vehicles or motorcycles, and a one-time fee of fifty dollars for the personalized prestige plates for antique motor vehicles.

(b) After August 15, 1999, the fee for issuing such special plates for antique motor vehicles or motorcycles shall be a one-time fee of twenty-five dollars and a one-time fee of fifty dollars for the personalized prestige plates.

(2) The fee for issuing the license plates provided for in this Section to trucks with a gross vehicle weight in excess

of six thousand pounds shall be the same as for other antique motor vehicles.

(3) The fee for transferring a special license plate for an antique motor vehicle or an antique license plate to a subsequent owner of the vehicle shall be three dollars.

(4) Vehicles shall be registered as antique, classic, or vintage, upon application for registration and payment of the one-time fee. When the applicant provides a notarized statement that the vehicle being registered has not been used on a public highway during a period of non-registration, fees and penalties for that period shall not be assessed.

C. (1) In addition to the plates issued as provided in Subsections A and B of this Section, the secretary shall establish and issue collector plates for special interest vehicles. The vehicles shall be used primarily for special occasions such as exhibitions, club activities, parades, and other functions of public interest, or for necessary testing, maintenance, and storage purposes.

(2) As used in this Subsection, "special interest vehicle" means a motor vehicle which is twenty-five years old or older, has not been materially modified or altered from the original manufacturer's specifications, and is being preserved by hobbyists because of its historic interest.

(3) The secretary shall determine the color and design of the plates in conjunction with the Louisiana Region Antique Auto Club of America.

(4) The fee for issuing such collector plates shall be five dollars a year, and such plates are to be renewed every five years.

D. Beginning July 1, 2001, all license plates issued for antique motor vehicles shall be issued upon payment of a one-time fee. No additional payment of the regular motor vehicle registration license fee shall be necessary for any

owner to permanently retain such plate after that date.

E. The secretary shall provide by rules and regulations for the implementation of this Section. Oversight review of the rules and regulations shall be conducted by the Joint Legislative Committee on Transportation, Highways and Public Works.

§ 463.9. Special Shriner vehicle license plates

A. The commissioner shall establish and issue special Shriner license plates for motor vehicles, including but not necessarily restricted to passenger cars, motorcycles, vans, or any other motor vehicle, which are painted in the Shrine colors, owned by a member in good standing of a Shrine organization and used by the member or the organization in Shrine parades or for other escort services.

B. A one-time fee of twenty-five dollars shall be paid for each special Shriner license plate provided for in this Section, which shall be in addition to the regular motor vehicle registration license fee. The fee for transferring such plate to a subsequent owner of the vehicle shall be three dollars.

C. The commissioner shall provide by rules and regulations for the implementation of this Section.

§ 463.12. Street rod license plates

A. The commissioner shall establish and issue special street rod license plates for motor vehicles defined as street rods under the provisions of R.S. 32:452. These license plates shall be used in lieu of the regular motor vehicle registration license plates and shall be issued for the life of the vehicle.

B. The fee for issuing the street rod license plate provided for in this Section shall be a one-time fee of twenty-five

dollars for each plate which shall be in addition to the regular motor vehicle registration license fee.

C. The special license plate shall bear the inscription "Street Rod". In addition, such plates shall have displayed thereon the vehicle number assigned to the vehicle by the commissioner. With the exception of the special designation, the overall design and color of the plate shall be in general compliance with R.S. 47:463(A)(3).

D. The commissioner shall provide by rules and regulations for the implementation of this Section.

§ 463.14. Special Farhad Grotto vehicle license plates

A. The commissioner shall establish and issue special Farhad Grotto license plates for motor vehicles, including but not necessarily restricted to passenger cars, motorcycles, vans, or any other motor vehicles, which are painted in the Grotto colors, owned by a member in good standing of a Grotto organization and used by the member or the organization in Grotto parades or for other escort services.

B. The fee for issuing the special Grotto license plate provided for in this Section shall be a one-time fee of twenty-five dollars for each plate, which shall be in addition to the regular motor vehicle registration license fee and the fee for transferring such plate to a subsequent owner of the vehicle shall be three dollars.

C. The commissioner shall provide by rules and regulations for the implementation of this Section.

§463.22. Special Shriner license plates

A. The secretary shall establish and issue special Shriner license plates for motor vehicles including but not limited to

passenger cars, vans, motorcycles, or other motor vehicles which are owned by members in good standing of a Shrine organization. The special license plates shall contain the Shrine symbol and such numbers or letters, or both, as the secretary finds expedient.

B. The fee for the special license plate shall be a one-time fee of twenty-five dollars which shall be in addition to the regular motor vehicle registration license fee.

C. The secretary shall adopt such rules and regulations as are necessary to implement the provisions of this Section, including but not limited to rules and regulations governing the transfer and disposition of the plates.

§ 463.23. Special license plates for active and retired firefighters

A. The secretary of the Department of Public Safety and Corrections shall establish special motor vehicle license plates, restricted to passenger cars, pickup trucks, vans, recreational vehicles, and motorcycles, which may be issued, upon application, to any citizen of Louisiana who is an active full-time professional or retired firefighter.

B. The fee for issuing the special active full-time professional and the retired firefighter plate shall be an initial one-time fee of twenty-five dollars at the time the original plate is issued for each plate, which shall be in addition to the regular motor vehicle registration license tax.

C. The secretary shall provide by rules and regulations for the implementation of this Section. Oversight review shall be conducted by the House and Senate Committees on Transportation, Highways and Public Works.

§ 463.24. Special license plates for retired law officers

A. The secretary of the Department of Public Safety and Corrections shall establish special motor vehicle license plates which may be issued, upon application, to any citizen of Louisiana who is a retired law officer.

B. The fee for issuing the special retired law officer plate shall be a one-time fee of twenty-five dollars for each plate, which shall be in addition to the regular motor vehicle registration license fee.

C. The secretary shall provide by rules and regulations for the implementation of this Section. Oversight review shall be conducted by the House and Senate Committees on Transportation, Highways and Public Works.

D. Any person who was employed as a law officer for twelve years or more shall be eligible for a special license plate under the provisions of this Section, regardless of whether or not that person is a member of, or is receiving retirement benefits from, a retirement system for law officers.

§ 463.28. Special license plates for members of the Civil Air Patrol

A. The provisions of this Section shall be applicable to members of the Civil Air Patrol.

B. Upon application of a member of the Civil Air Patrol, the secretary shall issue special prestige license plates to be used in lieu of the regular motor vehicle registration license plates. The prestige plates shall be issued in the same manner as other motor vehicle license plates.

C. A one-time fee of twenty-five dollars shall be paid for each plate, which shall be in addition to the regular motor

vehicle registration license fee.

D. The secretary shall establish such rules and regulations as are necessary to implement the provisions of this Section, including but not limited to rules and regulations governing the transfer and disposition of such license plates.

§ 463.30. Special license plates for active full-time professional firefighters

A. The secretary of the Department of Public Safety and Corrections shall establish special motor vehicle license plates which may be issued, upon application, to any citizen of Louisiana who is an active full-time professional firefighter.

B. The fee for issuing the special active full-time professional firefighter plate shall be an initial one-time fee of twenty-five dollars at the time the original plate is issued, which shall be in addition to the regular motor vehicle registration license fee.

C. The secretary shall provide by rules and regulations for the implementation of this Section. Oversight review shall be conducted by the House and Senate Committees on Transportation, Highways and Public Works.

§ 463.31. Special college and university license plates

A. Upon the request of any public college or university in Louisiana or any other institution pursuant to Subsection H of this Section, the secretary of the Department of Public Safety and Corrections shall establish special prestige motor vehicle license plates for such institution. The license plates shall be restricted to passenger cars, pick-up trucks, vans, and recreational vehicles. The license plate shall be of a color and

design selected by the institution requesting issuance of the prestige plate and shall bear the name of the institution. No institution shall request any change to the design or color of the license plates within a five-year period from the date of acceptance of a specific color and design.

B. The prestige license plates shall be issued, upon application, to any citizen of Louisiana in the same manner as any other motor vehicle license plate. The applicant shall designate his institutional preference.

C. A royalty fee of twenty-six dollars for the use of the institution's design by the department shall be paid to the institution for each license plate issued as provided in this Section.

D. The tax for the plate shall be the standard motor vehicle license tax imposed by Louisiana Constitution Article VII, Section 5.

E. The department shall collect the required royalty fee for each license plate and forward twenty-five dollars of the royalty fee as provided in Subsection C hereof to the specific institution for which such license plate is designated. The remaining royalty fee as provided in Subsection C hereof shall be retained by the department to offset the administrative costs.

F. The secretary shall establish such rules and regulations as are necessary to implement the provisions of this Section, including but not limited to rules and regulations governing the collection and disbursement of royalty fees, the transfer and disposition of such license plates, the colors available, and the design criteria.

G. (1) The monies received from the royalty fees by each respective institution shall be used solely for academic or financial need-based scholarships for that participating institution.

(2)(a) The management board of each participating institution shall be responsible for disbursing the funds and for establishing the scholarship program.

(b) The president or chancellor of each university, or his designee, shall be responsible for establishing the procedures and criteria for awarding scholarships under this program.

H. Upon the signing of a contract authorizing the use of the logo of any regionally accredited independent college or university, the secretary of the Department of Public Safety and Corrections shall establish prestige motor vehicle license plates for said college or university in accordance with the provisions of this Section. This contract shall include an agreement on the part of each institution to use the royalty fees as provided in Subsection G of this Section.

I. The special license plates authorized by this Section shall not be subject to the design requirements provided for by R.S. 47:463(A)(3).

§ 463.32. Special prestige license plates for members of Knights of Columbus

A. The secretary of the Department of Public Safety and Corrections shall establish special prestige license plates for passenger cars, pickup trucks, recreational vehicles, and vans, which plates may be issued, upon application, to members of the Knights of Columbus.

B. The procedure for issuing the special prestige license plate shall be as follows:

(1) The applicant shall pay the fee to the office of motor vehicles.

(2) The state headquarters shall determine if the

applicant is a member in good standing of the Knights of Columbus.

(3) If the applicant is a member in good standing, the state headquarters shall transmit a certificate of membership, to the secretary.

(4) The secretary shall transmit the license plate to the state headquarters.

(5) The state headquarters shall issue the license plate to the applicant.

C. The secretary shall adopt administrative rules to implement the provisions of this Section. The rules shall govern the transfer of plates and the surrender of plates.

D. The secretary shall determine the design of the special prestige license plates issued under the provisions of this Section, provided such color and design shall be in general compliance with R.S. 47:463(A)(3) and provided that the plate shall bear the words "KNIGHTS OF COLUMBUS".

E. The fees for the special prestige license plates issued under the provisions of this Section shall be a one-time fee of twenty-five dollars for each plate, which shall be in addition to the regular motor vehicle registration license fee.

§ 463.33. Street cruiser license plates

A. Subject to the design requirements of R.S. 47:463(A)(3), the commissioner shall establish and issue special street cruiser license plates for motor vehicles defined as street cruisers under the provisions of R.S. 32:455. These license plates shall be used in lieu of the regular motor vehicle registration license plates, if issued prior to August 15, 1995, shall be issued for the life of the vehicle.

B. The fee for issuing the street cruiser license plate

provided for in this Section shall be a one-time fee of twenty-five dollars for each plate, which shall be in addition to the regular motor vehicle registration license fee.

C. The special license plate shall bear the inscription "Street Cruiser". Additionally, such plates shall have displayed thereon the word "Louisiana" and the vehicle number assigned to the vehicle by the commissioner and shall be a design approved by the commissioner.

D. The commissioner shall adopt administrative rules to provide for the implementation of this Section.

§ 463.36. Special prestige license plates; clergy

A. The secretary of the Department of Public Safety and Corrections shall establish prestige license plates for motor vehicles, restricted to passenger cars, pickup trucks, recreational vehicles, and vans, which may be issued upon application of any member of the clergy.

B. The charge for this special license plate shall be a one-time fee of twenty-five dollars for each plate, which shall be in addition to the regular motor vehicle registration license fee charged under the provisions of R.S. 47:463.

C. The secretary shall promulgate rules and regulations necessary to implement the provisions of this Section, including rules and regulations governing the transfer and disposition of the license plates upon the death of the recipient and governing the design of the plate.

§ 463.37. Special prestige license plates; retired legislators

A. The secretary of the Department of Public Safety and Corrections shall establish prestige license plates for motor vehicles, restricted to passenger cars, pickup trucks,

recreational vehicles, and vans, which may be issued upon application of any citizen of Louisiana who was a member of the U.S. Armed Forces or of the Coast Guard who served in World War II.

B. The charge for this special license plate shall be a one-time fee of twenty-five dollars for each plate, which shall be in addition to the regular motor vehicle registration license fee charged under the provisions of R.S. 47:463.

C. The secretary shall promulgate rules and regulations necessary to implement the provisions of this Section, including rules and regulations governing the transfer and disposition of the license plates upon the death of the recipient and governing the design of the plate.

§ 463.39. Special license plates; United States Olympic Committee

A. The Department of Public Safety and Corrections shall establish a special prestige motor vehicle license plate for the United States Olympic Committee. The license plates shall be restricted to use on passenger cars, pickup trucks, vans, and recreational vehicles.

B. The prestige license plates shall be issued, upon application, to any citizen of Louisiana in the same manner as any other motor vehicle license plate, and as provided for in this Section.

C. The tax for the plate shall be the standard motor vehicle license tax imposed by Article VII, Section 5 of the Constitution of Louisiana, plus an additional fee of twenty-five dollars. However, no such plate shall be issued unless the application is accompanied by a donation of twenty-four dollars to be distributed by Subsection D herein and a one dollar handling fee.

D. The department shall collect the donation for each license plate and forward twelve dollars of the donation as provided in Subsection C hereof to the United States Olympic Committee. In addition, the department shall forward twelve dollars of the donation to the Louisiana State Games Foundation, Inc. The activities of the United States Olympic Committee and the Louisiana Games Foundation, Inc. are hereby deemed a public purpose and shall qualify as cooperative endeavors under the provisions of Article VII, Section 14(C) of the Constitution of Louisiana. The one dollar handling fee as provided in Subsection C hereof shall be retained by the department to offset the administrative costs.

E. The secretary shall establish such rules and regulations as are necessary to implement the provisions of this Section, including but not limited to rules and regulations governing the collection and disbursement of the donation, the transfer and disposition of such license plates, the colors available, and the design criteria. The design shall include the use of the United States Olympic Committee logo.

§ 463.40. Special license plates to promote child safety

A. The secretary of the Department of Public Safety and Corrections shall establish special prestige motor vehicle license plates for the purpose of promoting child safety. The license plates shall be restricted to passenger cars, pick-up trucks, vans, and recreational vehicles. The secretary shall determine the design of the special prestige license plate issued under the provisions of this Section, provided such design shall bear the words "Think Safe Kids" and include a symbol to be determined by the Coalition for Maternal and Infant Health promoting safety belt use.

B. The prestige license plate shall be issued, upon

application, to any citizen of Louisiana in the same manner as any other motor vehicle license plate.

C. The fee for the special prestige license plates issued under the provisions of this Section shall be:

(1) Initial fee--twenty-six dollars plus the standard license plate registration fee.

(2) Renewal fee--the same as the initial fee.

D. The department shall collect the fee for the special prestige license plates and forward twenty-five dollars to the Children's Trust Fund created by the provisions of R.S. 46:2403. The remaining portion of the fee shall be retained by the department to offset administrative costs.

E. The monies received by the Children's Trust Fund for the special prestige license plates shall be used solely for child safety programs.

F. The secretary shall establish and promulgate rules and regulations as are necessary to implement the provisions of this Section.

§ 463.41. Special prestige license plates for members of Knights of Peter Claver and the Knights of Peter Claver, Ladies Auxiliary

A. The secretary of the Department of Public Safety and Corrections shall establish special prestige license plates for passenger cars, pickup trucks, recreational vehicles, and vans, which plates may be issued, upon application, to members of the Knights of Peter Claver and the Knights of Peter Claver, Ladies Auxiliary.

B. The procedure for issuing the special prestige license plate shall be as follows:

(1) The applicant shall pay the fee to the office of

motor vehicles. The applicant shall also provide the office of motor vehicles a letter from the applicant's grand knight or grand lady of applicant's council or court certifying that the applicant is a member in good standing of the Knights of Peter Claver or she is a member in good standing of the Knights of Peter Claver, Ladies Auxiliary.

(2) The secretary shall transmit the license plate to the applicant.

C. The secretary shall adopt administrative rules to implement the provisions of this Section. The rules shall govern the transfer of plate and the surrender of plate.

D. The secretary shall determine the design of the special prestige license plate issued under the provisions of this Section, provided such color and design shall be in general compliance with R.S. 47:463(A)(3); provided that the plate shall bear the words "KNIGHTS OF PETER CLAVER".

E. The fees for the special prestige license plate issued under the provisions of this Section shall be:

(1) Initial fee--twenty-five dollars plus the standard license plate registration fee.

(2) Renewal fee--the same as the fee for renewing regular plates.

§ 463.43. Special license plates; office of environmental education

A. The Department of Public Safety and Corrections shall establish a special prestige motor vehicle license plate for the office of environmental education, R.S. 30:2503 et seq. The license plates shall be restricted to use on passenger cars, pickup trucks, vans, and recreational vehicles.

B. The prestige license plates shall be issued, upon

application, to any citizen of Louisiana in the same manner as any other motor vehicle license plate, and as provided for in this Section.

C. The tax for the plate shall be the standard motor vehicle license tax imposed by Article VII, Section 5 of the Constitution of Louisiana. However, no such plate shall be issued unless the application is accompanied by a donation of twenty-five dollars to be distributed as provided by Subsection D herein and a one dollar handling fee.

D. The department shall collect the donation for each license plate and forward the donation as provided in Subsection C hereof to the office of environmental education in the office of the governor, R.S. 30:2503 et seq. The one dollar handling fee as provided in Subsection C hereof shall be retained by the department to offset the administrative costs. The funds received by the office of environmental education pursuant to this Section shall be deposited in the Louisiana Environmental Education Fund, R.S. 30:2511 and used solely for the purposes of that fund.

E. The secretary with the assistance of the office of environmental education shall establish such rules and regulations as are necessary to implement the provisions of this Section including but not limited to rules and regulations governing the collection and disbursement of the donation, the transfer and disposition of such license plates, the colors available, and the design criteria. The design shall include the use of the office of environmental education logo.

§ 463.44. Special license plates; Louisiana educators

A. Upon application of an educator educated or employed in Louisiana, the secretary shall issue special prestige license plates to be used in lieu of the regular motor vehicle registration license plates. The prestige plates shall be issued

in the same manner as other motor vehicle license plates.

B. The charge for this special license plate shall be the same as for regular license plates; however, the applicant shall pay for the additional costs associated with the production of such plate.

C. The secretary shall establish such rules and regulations as are necessary to implement the provisions of this Section, including but not limited to rules and regulations governing the transfer and disposition of such license plates and a determination of what the additional cost of the plate shall be. Such rules and regulations shall be promulgated in accordance with the Administrative Procedure Act and shall be presented to the House and Senate Committees on Transportation, Highways and Public Works for oversight.

§ 463.45. Special prestige license plates; Louisiana black bear

A. The secretary of the Department of Public Safety and Corrections shall establish prestige license plates for motor vehicles, restricted to passenger cars, pickup trucks, recreational vehicles, and vans, which plates shall bear a logo with a picture of a Louisiana black bear.

B. The charge for this special license plate shall be twenty-six dollars, which shall be assessed every two years in addition to the regular fee charged under the provisions of R.S. 47:463.

C. (1) Except as provided in Paragraph (2) of this Subsection, the revenues realized from the additional twenty-six dollar fee imposed by Subsection B of this Section shall be remitted to the state as provided by law. The state treasurer shall place an amount equal to those revenues in the Conservation Fund, after complying with the requirements of

R.S. 56:10(B), and shall credit that amount to the "black bear account" which is created within the Conservation Fund through the provisions of R.S. 56:10(B)(9). The funds raised from the license plate sales shall be used solely for nongame purposes.

(2) Five percent of the net proceeds from the twenty-six dollar fee imposed by Subsection B of this Section shall be used to promote the existence of the black bear prestige license plate and its availability for use on passenger vehicles. Notwithstanding any other provision of law to the contrary, every hunting and fishing license issued by the Department of Wildlife and Fisheries shall include a notice with a telephone number and mailing address for information on how to acquire a black bear prestige license plate for use on one's passenger car, pickup truck, or van.

D. The secretary shall adopt administrative rules to implement the provisions of this Section.

§ 463.46. Special prestige license plates; Louisiana Quail Unlimited plate

A. The secretary of the Department of Public Safety and Corrections shall establish prestige license plates for motor vehicles, restricted to passenger cars, pickup trucks, recreational vehicles, and vans, which plates shall bear a logo with a picture of a quail.

B. The charge for this special license plate shall be twenty-six dollars, which shall be assessed every two years in addition to the regular fee charged under the provisions of R.S. 47:463.

C. (1) Except as provided in Paragraph (2) of this Subsection, the revenues realized from the additional twenty-six dollar fee imposed by Subsection B of this Section shall

be deposited immediately upon receipt in the state treasury. The state treasurer shall place an amount equal to those revenues in the Conservation Fund, after complying with the requirements of R.S. 56:10(B), and shall credit that amount to the "quail account" which is created within the Conservation Fund through the provisions of R.S. 56:10(B)(10).

(2) Five percent of the net proceeds from the twenty-six dollar fee imposed by Subsection B of this Section shall be used to promote the existence of the Louisiana Quail Unlimited prestige license plate and its availability for use on passenger vehicles.

D. The secretary shall adopt administrative rules to implement the provisions of this Section.

§ 463.47. Families of police officer killed in the line of duty

A. The secretary of the Department of Public Safety and Corrections shall establish a special prestige license plate for passenger cars, pickup trucks, vans, and recreational vehicles which may be issued, upon application, to family members of a police officer killed in the line of duty.

B. The secretary shall determine the design of the special prestige plate, provided such design shall include the words "GONE BUT NOT FORGOTTEN" and a symbolic image of a police shield.

C. The prestige license plates shall be issued in the same manner as other motor vehicle plates. Each person who applies for the license plate shall provide proof of his relationship to the deceased police officer and shall provide proof that such police officer was killed in the line of duty.

D. The charge for this special plate shall be a one-time

charge of twenty-five dollars which shall be in addition to the regular motor vehicle registration license fee.

E. The secretary shall promulgate rules and regulations necessary to implement the provisions of this Section.

§ 463.48. Special prestige license plates; emergency medical technicians

A. The secretary of the Department of Public Safety and Corrections shall establish a special prestige license plate for motor vehicles, restricted to passenger cars, pickup trucks, vans, and recreational vehicles which may be issued, upon application, to any citizen of Louisiana who is a certified emergency medical technician.

B. Each person who applies for the issuance or renewal of a prestige license plate shall present to the secretary such proof of certification as an emergency medical technician as is acceptable to the secretary.

C. The fee for issuing the special emergency medical technician license plate shall be a fee of twenty-five dollars a year for each plate, which fee shall be in addition to the regular motor vehicle license fee as provided in R.S. 47:463.

D. The department shall collect the fee for the special license plates and forward twenty-four dollars to the state treasurer for deposit into the Emergency Medical Technician Fund created by the provisions of R.S. 40:1236.5. The remaining portion of the fee shall be retained by the department to offset administrative costs.

E. The secretary shall promulgate rules to implement the provisions of this Section, including but not limited to rules governing the issuance, transfer, and disposition of such license plates and governing the design of the plate. Such rules shall be promulgated in accordance with the

Administrative Procedure Act.

§ 463.49. Special prestige license plates; legislators

A. The secretary of the Department of Public Safety and Corrections shall establish prestige license plates for motor vehicles, restricted to passenger cars, pickup trucks, and vans, which may be issued upon application of any member or officer of the legislature.

B. The charge for this special license plate shall be a one-time fee of twenty-five dollars for each plate, which shall be in addition to the regular motor vehicle registration license fee charged under the provisions of R.S. 47:463.

C. The secretary shall promulgate rules and regulations necessary to implement the provisions of this Section, including rules and regulations governing the transfer and disposition of the license plates upon the death of the recipient and governing the design of the plate.

§ 463.50. Special license plates; Helping Schools

A. The secretary of the Department of Public Safety and Corrections shall establish a prestige license plate for motor vehicles, restricted to passenger cars, pickup trucks, and vans for the purpose of promoting support for elementary and secondary education. The secretary shall determine the design of the special prestige license plate issued under the provisions of this Section, provided such design shall bear the words "Helping Schools" and include a logo which is a symbol for reading programs in education.

B. The prestige plate shall be issued, upon application, to any citizen of Louisiana in the same manner as any other motor vehicle license plate.

C. The charge for this special license plate shall be twenty-five dollars annually in addition to the regular fee charged under the provisions of R.S. 47:463.

D. The revenues from the additional twenty-five dollar fee imposed by Subsection C of this Section shall be deposited immediately upon receipt into the state treasury. After compliance with the requirements of Article VII, Section 9(B) of the Constitution of Louisiana relative to the Bond Security and Redemption Fund, and prior to monies being placed in the state general fund, an amount equal to that deposited shall be credited to the State Board of Elementary and Secondary Education and shall be used solely for the purchase of text books to be used in approved elementary and secondary schools of the state. The monies in this fund shall be invested by the state treasurer in the same manner as monies in the state general fund.

E. The state superintendent of education shall promulgate rules and regulations as necessary to implement the provisions of this Section relative to the purchase and distribution of text books.

F. The secretary shall promulgate rules and regulations to implement the provisions of Subsections A, B, C, and D of this Section.

§ 463.51. Special prestige license plates; Lions International

A. The secretary of the Department of Public Safety and Corrections shall establish a special prestige license plate which may be issued, upon application, to any citizen of Louisiana who is an active member of Lions International. The license plates shall be restricted to passenger cars, pickup trucks, vans, and recreational vehicles. The prestige license plate shall be of a color and design which is in general

compliance with R.S. 47:463(A)(3). However, the plate shall bear the words "Louisiana Lions" across the bottom of the plate, immediately preceded by the Lion's slogan "We Serve".

-B. The prestige plates shall be issued in the same manner as other motor vehicle license plates.

C. The donation required by this Section shall be in addition to the regular motor vehicle registration license fee.

D. (1) No such plate shall be issued unless the application is accompanied by a donation of twenty-five dollars to be distributed as provided in this Subsection and a one-dollar handling fee to be retained by the department to offset a portion of the administrative costs. The department shall collect the donation for each license plate which shall be annually appropriated by the legislature to the office for citizens with developmental disabilities, Department of Health and Hospitals.

(2) An amount of monies equal to the total amount of donations shall be equally divided and disbursed annually by the office for citizens with developmental disabilities to the Louisiana Lions Eye Foundation in New Orleans and the Crippled Children's Camp in Leesville. The monies shall be used solely for the expenses incurred in providing services to the developmentally disabled children of this state and in providing treatment to the sight-impaired whose eligibility for such treatment shall be determined by the Louisiana Lions Eye Foundation. The services of the Louisiana Lions Eye Foundation and the Crippled Children's Camp are hereby deemed a public purpose and shall qualify as cooperative endeavors under the provisions of Article VII, Section 14(C) of the Constitution of Louisiana.

E. The secretary shall establish rules and regulations as are necessary to implement the provisions of this Section, including but not limited to rules and regulations governing

the collection and disbursement of the donation and the transfer and disposition of such license plates.

F. Each Louisiana Lions chapter shall be responsible for certifying applications on a form approved by the Department of Public Safety and Corrections to be submitted with other required registration papers. If a member of any Louisiana Lions chapter holding this special prestige license plate terminates membership, the affected chapter shall notify the department so that the plate may be recovered and the registration cancelled.

§ 463.52. Special prestige license plates; Louisiana Special Olympics

A. The secretary of the Department of Public Safety and Corrections shall establish a special prestige license plate for the Louisiana Special Olympics. The license plates shall be restricted to use on passenger cars, pickup trucks, recreational vehicles, and vans.

B. The prestige license plates shall be issued, upon application, to any citizen of Louisiana in the same manner as any other motor vehicle license plate and as provided for in this Section.

C. The tax for the plate shall be the standard motor vehicle license tax imposed by Article VII, Section 5 of the Constitution of Louisiana. However, no such plate shall be issued unless the application is accompanied by a donation of twenty-five dollars to be distributed as provided in Subsection D of this Section and a one-dollar handling fee.

D. The department shall collect the donation for each license plate and forward it to the Louisiana Special Olympics. The activities of the Louisiana Special Olympics are hereby deemed a public purpose and shall qualify as

cooperative endeavors under the provisions of Article VII, Section 14(C) of the Constitution of Louisiana. The one-dollar handling fee as provided in Subsection C of this Section shall be retained by the department to offset the administrative costs.

E. The secretary shall establish such rules and regulations as are necessary to implement the provisions of this Section, including but not limited to rules and regulations governing the design of the plate, the transfer and disposition of such plates, and the collection and disbursement of the donation. The design shall include the words "Special Olympics".

§ 463.53. Special prestige license plates; Ducks Unlimited

A. The secretary of the Department of Public Safety and Corrections shall establish special prestige license plates which may be issued, upon application, to any citizen of Louisiana for Ducks Unlimited. The license plates shall be restricted to passenger cars, pickup trucks, recreational vehicles, and vans. The license plate shall be of a color and design selected by the organization requesting issuance of the plate, provided that it is in compliance with R.S. 47:463(A)(3).

B. The prestige plates shall be issued in the same manner as other motor vehicle license plates.

C. The charge for this special license plate shall be fifty dollars in addition to the regular fee charged under the provisions of R.S. 47:463.

D. The revenues realized from the additional fifty-dollar fee imposed by Subsection C of this Section shall be remitted to the state as provided by law. The state treasurer shall place an amount equal to those revenues in the Conservation Fund, after complying with the requirements of R.S. 56:10(B), and

shall credit that amount to the "waterfowl account" which is created within the Conservation Fund through the provisions of R.S. 56:10(B)(8). The funds raised from the license plates shall be used solely for the purpose of conserving, restoring, and enhancing migratory waterfowl habitat in Louisiana.

E. The secretary shall promulgate rules and regulations to implement the provisions of this Section. Oversight review of these rules and regulations shall be conducted by the House and Senate Committees on Transportation, Highways and Public Works.

§ 463.54. Special prestige license plates; Wild Turkey Federation

A. The secretary of the Department of Public Safety and Corrections shall establish prestige license plates for motor vehicles, restricted to passenger cars, pickup trucks, and vans, which plates shall bear a logo with a picture of a wild turkey or the Wild Turkey Federation logo.

B. The charge for this special license plate shall be twenty-six dollars, which shall be assessed every two years in addition to the regular fee charged under the provisions of R.S. 47:463.

C. The revenues realized from the additional twenty-six dollar fee imposed by Subsection B of this Section shall be deposited immediately upon receipt in the state treasury. After compliance with the requirements of Article VII, Section 9(B) of the Constitution of Louisiana relative to the Bond Security and Redemption Fund, and prior to money being placed in the state general fund, the state treasurer shall place an amount equal to those revenues in the Louisiana Wild Turkey Stamp Fund, after complying with the requirements of R.S. 56:10(B). Five dollars of the funds raised from the license plate sales shall be used for the

purpose of advertising the license plates and the remainder of the funds shall be used solely for turkey restocking and research purposes.

D. The secretary shall adopt administrative rules to implement the provisions of this Section.

§ 463.56. Special prestige license plate for Girl Scouts of U.S.A.

A. The secretary of the Department of Public Safety and Corrections shall establish a special prestige motor vehicle license plates for the Girl Scouts of U.S.A. The license plates shall be restricted to passenger cars, pick-up trucks, vans, and recreational vehicles. The license plate shall be of a color and design selected by the Girl Scout Councils of Louisiana, provided that it is in compliance with R.S. 47:463(A)(3), and shall include the Girl Scouts of U.S.A. logo and the words "FOR HER FUTURE".

B. The prestige license plates shall be issued, upon application, to any citizen of Louisiana in the same manner as any other motor vehicle license plate.

C. A one-time fee of twenty-five dollars shall be paid for each plate, which shall be in addition to the regular motor vehicle registration license fee.

D. A royalty fee of twenty-five dollars for the use of the official logo of the Girl Scouts of U.S.A. shall be collected by the department and shall be forwarded to the Audubon Girl Scout Council, Inc. for each license plate issued as provided in this Section.

E. The secretary shall establish such rules and regulations as are necessary to implement the provisions of this Section, including but not limited to rules and regulations governing the collection and disbursement of royalty fees, the transfer

and disposition of such license plates, the colors available, and the design criteria.

F. The monies received from the royalty fees by Audubon Girl Scout Council shall be used solely for the support of programs established and administered by the Girl Scout Councils of Louisiana.

G. Upon the signing of a contract authorizing the use of the logo of the Girl Scouts of U.S.A., the secretary of the Department of Public Safety and Corrections shall establish prestige motor vehicle license plates in accordance with the provisions of this Section. This contract shall include an agreement on the part of the Girl Scouts of U.S.A. to use the royalty fees as provided in Subsection F of this Section.

§ 463.57. Special prestige license plate for McKinley High School

A. The secretary of the Department of Public Safety and Corrections shall establish a special prestige motor vehicle license plate for McKinley High School. The license plate shall be restricted to passenger cars, pickup trucks, vans, and recreational vehicles. The license plate shall be of a color and design selected by the McKinley High School Alumni Association, provided that it is in compliance with R.S. 47:463(A)(3).

B. The prestige license plate shall be issued, upon application, to any citizen of Louisiana in the same manner as any other motor vehicle license plate, and as provided for in this Section.

C. The charge for the plate shall be the standard motor vehicle license tax imposed by Article VII, Section 5 of the Constitution of Louisiana. However, no such plate shall be issued unless the application is accompanied by a donation of

fifty dollars to be distributed in the manner set forth in Subsection D and a handling fee of three dollars and fifty cents.

D. The department shall collect the donation for each license plate and forward the donation to the McKinley High School Alumni Association. The rebuilding and renovation of the Old McKinley High School building shall be deemed a public purpose and shall qualify as a cooperative endeavor under the provisions of Article VII, Section 14(C) of the Constitution of Louisiana. The handling fee of three dollars and fifty cents as provided in Subsection C of this Section shall be retained by the department to offset a portion of the administrative costs.

E. The secretary shall establish rules and regulations as are necessary to implement the provisions of this Section, including but not limited to rules and regulations governing the collection and disbursement of the donation, the transfer and disposition of such license plates, the colors available, and the design criteria.

F. The monies received from the fees by the McKinley High School Alumni Association shall be used solely for the restoration and renovation of the Old McKinley High School building. Upon completion of the restoration and renovation of the building, the fees shall be used solely for preservation and maintenance of the building's structure. No monies received from the McKinley High School prestige plate shall be used to pay for any administrative costs or consulting fees.

§ 463.58. Special prestige license plates; Life Center Full Gospel Baptist Cathedral

A. The secretary of the Department of Public Safety and Corrections shall establish a Life Center Full Gospel Baptist Cathedral prestige license plate which may be issued to passenger cars, pickup trucks, recreational vehicles, and vans,

provided that there is a minimum of one thousand applicants for such plate. The license plate shall be of a color and design selected by the Life Center Full Gospel Baptist Cathedral, provided it is in compliance with R.S. 47:463(A)(3).

B. The charge for this prestige license plate shall be a one-time royalty fee of twenty-five dollars for each plate, which shall be in addition to the regular motor vehicle registration license tax and a handling fee of three dollars and fifty cents. The handling fee shall be retained by the department to offset a portion of the administrative cost.

C. The secretary shall promulgate rules and regulations in accordance with the Administrative Procedure Act to implement the provisions of this Section.

D. The royalty fee of twenty-five dollars shall be collected by the department and shall be forwarded to the Life Economic Development Corporation, a nonprofit corporation, to be used for educational programs.

§ 463.59. Special prestige license plates; Coastal Conservation

A. The secretary of the Department of Public Safety and Corrections shall establish prestige license plates for motor vehicles, restricted to passenger cars, pickup trucks, recreational vehicles, and vans for coastal conservation. The license plate shall be of a color and design selected by the Coastal Conservation Association of Louisiana, provided that it is in compliance with the requirements of R.S. 47:463(A)(3).

B. The prestige license plate shall be issued, upon application, to any citizen of Louisiana in the same manner as any other motor vehicle license plate.

C. The fee for the plate shall be fifty dollars in addition to

the standard motor vehicle registration license fee.

D. The revenue realized from the additional fifty dollar fee imposed by Subsection C of this Section shall be remitted to the state treasurer as provided by law. The state treasurer shall forward an amount equal to those revenues to the Louisiana Department of Wildlife and Fisheries. The Louisiana Department of Wildlife and Fisheries shall dedicate fifty percent of such funds to the enforcement division and fifty percent of such funds to the marine fisheries division.

E. The secretary may promulgate rules and regulations in accordance with the Administrative Procedure Act as are necessary to implement the provisions of this Section, including but not limited to rules and regulations governing the collection and disbursement of the additional fee, the transfer and disposition of such plates, the colors available, and the design criteria.

§ 463.60. Special prestige license plates; "Animal Friendly" prestige license plate; animal population control; Pet Overpopulation Fund

A. The secretary of the Department of Public Safety and Corrections shall establish a special prestige "Animal Friendly" license plate for motor vehicles. Notwithstanding the provisions of R.S. 47:463(A)(3), the department shall establish this prestige plate provided there is a minimum of one hundred applicants for such plate. The license plates shall be restricted to passenger cars, pickup trucks, vans, and recreational vehicles. This prestige plate shall be issued, upon application, to any citizen of Louisiana in the same manner as any other motor vehicle license plate.

B. The charge for this prestige license plate shall be twenty-five dollars to be distributed as provided in this

Section and a handling fee of three dollars and fifty cents to be retained by the department to offset a portion of administrative costs. These charges shall be in addition to the standard motor vehicle license tax imposed by Article VII, Section 5 of the Constitution of Louisiana.

C. The department shall collect the monies received from the sale of this prestige license plate and shall forward twenty-five dollars immediately upon receipt to the state treasury. After compliance with the requirements of Article VII, Section 9(B) of the Constitution of Louisiana relative to the Bond Security and Redemption Fund, the monies shall be deposited in the Pet Overpopulation Fund, which is hereby created within the state treasury, and shall be used solely to provide reduced-cost sterilizations of adult animals as defined in R.S. 3:2471(2) to indigent pet owners. All unexpended and unencumbered monies remaining in the fund at the close of each fiscal year shall remain in the fund. Monies in the fund shall be invested by the state treasurer in the same manner as monies in the state general fund. All interest earned from the investment of monies in the fund shall be credited to this fund after compliance with Article VII, Section 9(B) of the Constitution of Louisiana.

D. A Pet Overpopulation Advisory Council is hereby established within the office of the governor to establish guidelines for the expenditure of funds credited to the Pet Overpopulation Fund and to review and make recommendations on grant applications submitted in compliance with Subsection F of this Section. Members of the council shall serve on a voluntary basis and shall not receive any compensation or reimbursement of expenses. The council shall meet at least twice annually, and it shall consist of the following members:

(1) One representative of the Department of Public Safety and Corrections, Public Safety Services appointed by

the secretary of the department.

(2) One representative of the Department of Health and Hospitals appointed by the secretary of such department.

(3) The state veterinarian or his designee.

(4) One member of the House of Representatives appointed by the speaker.

(5) One member of the Senate appointed by the president.

(6) One representative of the Humane Society of Louisiana appointed by the board of such organization.

(7) One representative of the Louisiana Veterinary Medical Association appointed by the board of such organization.

(8) One representative of the Southern Animal Foundation appointed by the board of such organization.

(9) One representative of a public animal sheltering agency appointed by the board of the Humane Society of Louisiana.

(10) One representative of a private animal sheltering agency appointed by the board of the Humane Society of Louisiana.

E. Any indigent pet owner on public assistance, including but not limited to the Food Stamp Program, the Supplemental Security Income Program, the Temporary Assistance for Needy Families Program, the Family Independence Temporary Assistance Program, or any other similar public assistance program named by the Pet Overpopulation Advisory Council, shall qualify for low-cost services.

F. Any veterinarian licensed in this state, veterinary hospital, or organization qualified as a tax-exempt organization under Section 501(c)(3) of the Internal Revenue

Code of 1954, as amended, may apply for grants from the fund, on an application approved by the Pet Overpopulation Advisory Council. Grants shall be distributed solely for purposes of providing low-cost pet sterilizations by licensed veterinarians.

G. The Pet Overpopulation Advisory Council shall establish policies and procedures, subject to oversight by the House and Senate Transportation, Highways and Public Works Committees, to implement the provisions of this Section, including but not limited to the collection of the monies received for the sale of these prestige license plates, the disbursement of grants, the transfer and disposition of such plates, the colors available for the plates, and the design criteria.

H. The state treasurer shall credit to the Pet Overpopulation Fund any additional funds received from private contributions, grants, and donations made to the Pet Overpopulation Fund.

§ 463.61. Special prestige license plates; "Choose Life"; Advisory Council; fund

A. The secretary of the Department of Public Safety and Corrections shall establish a special prestige license plate to be known as the "Choose Life" plate, provided there is a minimum of one hundred applicants for such plate. The license plate shall be restricted to passenger cars, pickup trucks, vans, motorcycles, and recreational vehicles. However, there must be a minimum of one thousand applicants for motorcycle license plates. The license plate shall be of a color and design selected by the Choose Life Advisory Council provided it is in compliance with R.S. 47:463(A)(3) and shall bear the legend "Choose Life".

B. The prestige license plate shall be issued, upon

application, to any citizen of Louisiana in the same manner as any other motor vehicle license plate.

C. The annual fee for this special prestige license plate shall be twenty-five dollars, in addition to the regular motor vehicle license fee provided in R.S. 47:463, to be distributed in the manner set forth in Subsection F of this Section and a three dollar and fifty cent handling fee to be retained by the department to offset a portion of administrative costs.

D. The department shall collect the fee for the prestige license plate and forward the fee to the state treasurer for immediate deposit in the state treasury.

E. (1) A Choose Life Advisory Council, hereinafter referred to as the "Council", shall be established to design and review grant applications for qualifying organizations, and shall make recommendations regarding the awarding of grants to the state treasurer. Members of the Council shall serve one-year terms, on a voluntary basis, commencing on October 1, 1999, and shall receive no compensation or reimbursement of any type. Council members are hereby authorized to serve successive terms. The Council shall meet at least once annually, and shall be comprised of the following members:

(a) The president, or his designee, from the American Family Association.

(b) The president, or his designee, from the Louisiana Family Forum.

(c) The president, or his designee, from the Concerned Women for America organization.

(2) At the discretion of the Council, membership may be extended to add members representing the following:

(a) Physicians specializing in obstetrics.

(b) Physicians specializing in pediatrics.

(c) Women who have surrendered children for adoption.

(d) Couples who have adopted children.

(e) Adoption advocacy groups.

(f) Board-certified social workers.

(g) Certified counselors.

F. (1) After compliance with the requirements of Article VII, Section 9(B) of the Constitution of Louisiana relative to the Bond Security and Redemption Fund, an amount equal to the monies received by the state treasury pursuant to provisions of Subsection D of this Section shall be deposited into the Choose Life Fund, which is hereby created as a special fund in the state treasury and hereafter referred to as the "fund". All unexpended and unencumbered monies in the fund at the end of the fiscal year shall remain in the fund. Monies in the fund shall be invested by the state treasurer in the same manner as monies in the state general fund and interest earned on the investment of such monies shall be deposited into the fund. Monies in the fund shall only be withdrawn pursuant to an appropriation by the legislature solely for the purposes provided by this Section.

(2) An organization wishing to qualify for receipt of funds shall submit an affidavit affirming its qualifications, which shall include a pledge to spend the money in accordance with the provisions of this Section, to the Council and shall qualify as tax exempt under Section 501(c)(3) of the Internal Revenue Code of 1954, as amended. Furthermore, an organization wishing to qualify for receipt of funds shall demonstrate it provides counseling and other services intended to meet the needs of expectant mothers considering adoption for their unborn child. No monies deposited into the fund shall be distributed to any organization involved in, or associated with counseling for, or referrals to, abortion

clinics, providing medical abortion-related procedures, or pro-abortion advertising.

(3) Organizations receiving monies under this Section shall use at least fifty percent of such funds to provide for the material needs of expectant mothers considering adoption for their unborn child, including clothing, housing, medical care, food, utilities, and transportation. Such monies may also be used to meet the needs of infants awaiting placement with adoptive parents. The remaining funds may be used for counseling, training, and providing pregnancy testing, but shall not be used for administrative, legal, or capital expenditures.

G. The state treasurer, based on the recommendations of the Council, shall annually disburse from the fund an equal amount to each of the qualifying organizations, and shall make available, upon request, the name and the amount of monies disbursed to each organization. An organization receiving monies from the fund may be required to submit an annual audit prepared by a certified public accountant, at the discretion of the state treasurer and the Council. The state treasurer and the Council shall review the distribution and expenditure of funds under this Section at least once every three years to ensure funds are disbursed and expended in accordance with the provisions of this Section.

H. The secretary may establish rules and regulations to implement the provisions of this Section, including but not limited to rules and regulations governing the collection and disbursement of fees, the transfer and disposition of such license plates, the colors available, and the design criteria.

§ 463.62. Special license plates; Charles E. Dunbar Award recipient; First Mount Zion Baptist Church

A. (1) The secretary of the Department of Public Safety

and Corrections shall establish a special prestige license plate for motor vehicles, restricted to passenger cars, pickup trucks, vans, and recreational vehicles which may be issued, upon application, to any recipient of the Charles E. Dunbar Award.

(2) The secretary of the Department of Public Safety and Corrections shall establish a special prestige license plate for motor vehicles, restricted to passenger cars, pickup trucks, vans, and recreational vehicles which may be issued, upon application, to any member of the First Mount Zion Baptist Church, Dr. Toris T. Young, Pastor.

B. Each person who applies for the issuance or renewal of the Charles E. Dunbar Award prestige license plate shall present certification by the Louisiana Civil Service League of his receipt of the Charles E. Dunbar Award to the secretary. The secretary shall confirm such certification with the Louisiana Civil Service League.

C. The charge for this special license plate shall be the regular fee charged under the provisions of R.S. 47:463.

D. The secretary shall promulgate rules to implement the provisions of this Section, including, but not limited to rules governing the issuance, transfer, and disposition of such license plates and governing the design of the plate. Such rules shall be promulgated in accordance with the Administrative Procedure Act.

§ 463.63. Prestige license plates; the Louisiana Notary Association; "Civil Law Notary"

A. The secretary of the Department of Public Safety and Corrections shall establish special prestige license plates for passenger cars, pickup trucks, recreational vehicles, and vans which plates may be issued upon application to members in

good standing with the Louisiana Notary Association.

B. The secretary shall determine the design of the plate issued under the provisions of this Section, provided such design shall bear the logo of the Louisiana Notary Association on the left side of the plate and the phrase "Civil Law Notary" below the license plate number.

C. The charge for the special license plate shall be the regular motor vehicle registration license fee.

D. The procedure for issuing the prestige plate shall be as follows:

(1) The applicant shall make application and pay the fee to the office of motor vehicles.

(2) The applicant shall present to the office of motor vehicles the original certificate indicating current membership in the Louisiana Notary Association or a certified copy of an original certificate indicating such membership. Any copy of an original certificate shall be certified by a notary other than the applicant.

(3) Application for renewal of such prestige plate shall require presentation of the same certification indicating current membership in the Louisiana Notary Association.

E. The secretary shall adopt such rules and regulations as are necessary to implement the provisions of this Section.

F. The department shall approve any logo, symbol, or design before production of such plates is commenced.

§ 463.64. Prestige license plates; Louisiana notaries; "Louisiana Notary"

A. The secretary of the Department of Public Safety and Corrections shall establish a Louisiana notary special prestige license plate for passenger cars, pickup trucks, recreational

vehicles, and vans. Such plate may be issued upon application to Louisiana notaries commissioned within this state.

B. The secretary shall determine the design of the plate issued under the provisions of this Section, and such plate shall bear the words "Louisiana Notary".

C. The fee for this prestige plate shall be the regular motor vehicle registration license fee.

D. To receive this prestige license plate, the applicant shall make application to the office of motor vehicles and shall present to the office of motor vehicles proof that the applicant is a commissioned notary within this state. Each application for renewal of such prestige plate shall also require proof that the applicant is a commissioned notary within this state.

E. The secretary shall adopt such rules and regulations as are necessary to implement the provisions of this Section, including but not limited to the design of the plate.

§ 463.66. Special prestige license plates; Catahoula Cur; "Louisiana State Dog"

A. The secretary of the Department of Public Safety and Corrections shall establish prestige license plates for motor vehicles, restricted to passenger cars, pickup trucks, recreational vehicles, and vans, which plates shall bear a logo with a picture of a Catahoula Leopard, commonly known as the Catahoula Cur, and the inscription "Louisiana State Dog."

B. The charge for this special license plate shall be the regular motor vehicle license fee charged under the provisions of R.S. 47:463.

C. The secretary shall promulgate rules and regulations

necessary to implement the provisions of this Section.

§ 463.67. Special prestige license plates; "I Support River Region Cancer Center"

A. The secretary of the Department of Public Safety and Corrections shall establish prestige license plates for motor vehicles, restricted to passenger cars, pickup trucks, recreational vehicles, and vans, which plates shall include the phrase "I Support River Region Cancer Center" and a logo to be determined by the River Region Cancer Screening and Early Detection Center.

B. The donation for this special license plate shall be twenty-six dollars, which shall be assessed every two years in addition to the regular fee charged under the provisions of R.S. 47:463.

C. The revenues realized from the additional twenty-six dollar donation imposed by Subsection B of this Section shall be remitted to the state as provided by law. The state treasurer shall disburse an amount equal to those revenues to the office of public health in the Department of Health and Hospitals. The funds raised from the additional license plate donation shall be disbursed from the office of public health to the River Region Cancer Screening and Early Detection Center and shall be used solely for the purposes of such center.

D. The secretary shall adopt administrative rules to implement the provisions of this Section.

E. The department shall approve any logo, symbol, or design before production of such plates is commenced.

§ 463.68. Special prestige license plates; Louisiana Association of Life Underwriters; "Life Underwriter"

A. The secretary of the Department of Public Safety and Corrections shall establish a prestige license plate which may be issued, upon application, to any citizen of Louisiana who is an active or past member of the Louisiana Association of Life Underwriters (LALU), or any citizen of Louisiana who is an immediate family member of an LALU member. This prestige license plate shall be restricted to passenger cars, pickup trucks, vans, and recreational vehicles.

B. The plate shall be white with blue lettering. The top of the plate shall bear the name "Louisiana". The LALU logo shall appear on the left center portion followed by one or more numeric digits for registration purposes. The bottom of the plate shall bear the words "Life Underwriter".

C. These plates may be issued, upon application, in the same manner as any other motor vehicle license plate.

D. The tax for the plate shall be the standard motor vehicle tax imposed by Article VII, Section 5 of the Constitution of Louisiana.

E. No such plate shall be issued unless the application is accompanied by a royalty fee of twenty-five dollars for the use of the official LALU logo to be forwarded to the Louisiana Association of Life Underwriter's Charitable Foundation for each license plate issued as provided by this Section and a handling fee of three dollars and fifty cents to be retained by the department to offset a portion of the administrative costs. The monies received from the royalty fees shall be forwarded within three months and shall be used solely for charitable purposes for residents of the state of Louisiana, including but not limited to a nonprofit organization recognized by the Internal Revenue Service as a 501(c)(3) organization or for educational scholarships to accredited Louisiana universities.

F. The executive office of the Louisiana Association of Life Underwriters shall be responsible for certifying applications on a form approved by the Department of Public Safety and Corrections to be submitted with other required registration papers. If a person holding such plate has his membership in LALU canceled for cause, the LALU office shall notify the Department of Public Safety and Corrections so that the plate may be recovered and the registration canceled.

G. The secretary shall establish rules in accordance with the Administrative Procedure Act as are necessary to implement the provisions of this Section, including but not limited to rules governing the collection and disbursement of the donation and the transfer and disposition of such plates.

H. Upon the signing of a contract authorizing the use of the logo of the LALU, the secretary of the Department of Public Safety and Corrections shall establish prestige motor vehicle license plates in accordance with the provisions of this Section. This contract shall include an agreement on the part of the LALU to use the royalty fees as provided in Subsection E of this Section.

§ 463.69. Special prestige license plates; "Don't Litter Louisiana"

A. The secretary of the Department of Public Safety and Corrections shall establish the "Don't Litter Louisiana" prestige license plate, which shall have a minimum of one hundred applicants for such plate, for motor vehicles, restricted to passenger cars, pickup trucks, recreational vehicles, and vans, to promote litter awareness. The license plate shall be of a color and design selected by the Department of Public Safety and Corrections, office of motor vehicles, shall bear the words "Don't Litter Louisiana", and

shall be in compliance with the requirements of R.S. 47:463(A)(3).

B. The charge for this special license plate shall be the standard motor vehicle registration license fee. However, no such plate shall be issued unless the application is accompanied by an annual donation of twenty-five dollars and a handling fee of three dollars and fifty cents. The donation shall be made as provided in Subsection C.

C. The department shall collect the twenty-five dollar annual donation and forward it to the state treasurer for immediate deposit into the state treasury. The state treasurer shall disburse an amount equal to those revenues to the Department of Public Safety and Corrections, office of state police, to be used solely for an antilitter campaign. The department shall retain the handling fee of three dollars and fifty cents to offset a portion of the administrative costs.

D. The secretary shall adopt rules and regulations as are necessary, in accordance with the Administrative Procedure Act, to implement the provisions of this Section, including but not limited to rules governing the collection and disbursement of the donation, the transfer and disposition of such plates, the colors available, and the design criteria.

§ 463.70. Special prestige license plates; letter carriers

A. The secretary of the Department of Public Safety and Corrections shall establish a special prestige motor vehicle license plate for letter carriers. The license plate shall be restricted to passenger cars, pickup trucks, vans, and recreational vehicles. The license plate shall be of a color and design selected by the Louisiana State Association of Letter Carriers, provided that it is in compliance with R.S. 47:463(A)(3).

B. The prestige license plate shall be issued, upon application, to any citizen of Louisiana presently employed as a letter carrier in the same manner as any other motor vehicle license plate.

C. The charge for this special license plate shall be a one-time fee of twenty-five dollars for each plate, which shall be in addition to the regular motor vehicle registration license fee charged under the provisions of R.S. 47:463 and a handling fee of three dollars and fifty cents which shall be retained by the department to offset administrative costs.

D. The secretary shall promulgate rules and regulations as are necessary to implement the provisions of this Section.

§ 463.71. Special prestige license plate; Boy Scouts of America

A. The secretary of the Department of Public Safety and Corrections shall establish a special prestige motor vehicle license plate for the Boy Scouts of America. The license plate shall be restricted to passenger cars, pickup trucks, vans, and recreational vehicles. The license plate shall be of a color and design selected by the Boy Scouts of America, provided that it is in compliance with R.S. 47:463(A)(3).

B. The prestige license plate shall be issued, upon application, to any citizen of Louisiana in the same manner as any other motor vehicle license plate.

C. The charge for this special license plate shall be a one-time fee of twenty-five dollars for each plate, which shall be in addition to the regular motor vehicle registration license fee charged under the provisions of R.S. 47:463 and a handling fee of three dollars and fifty cents which shall be retained by the department to offset administrative costs.

D. The secretary shall promulgate rules and regulations as

are necessary to implement the provisions of this Section.

§ 463.72. Special prestige license plate; public service sororities and fraternities; Alpha Phi Alpha

A. The secretary of the Department of Public Safety and Corrections shall establish a special prestige motor vehicle license plate for public service sororities and fraternities provided there are a minimum of one thousand applicants for such plate. The license plate shall be restricted to passenger cars, pickup trucks, vans, and recreational vehicles. The license plate shall be of a color and design selected by the various public service sororities and fraternities, provided that it is in compliance with R.S. 47:463(A)(3).

B. The prestige license plate shall be issued, upon application, to any citizen of Louisiana presently a member of any public service sorority or fraternity in the same manner as any other motor vehicle license plate.

C. The charge for this special license plate shall be a one-time fee of twenty-five dollars for each plate and a handling fee of three dollars and fifty cents, which shall be in addition to the regular motor vehicle registration license fee charged under the provisions of R.S. 47:463. The handling fee shall be retained by the department to offset a portion of administrative costs.

D. The secretary shall promulgate rules and regulations as are necessary to implement the provisions of this Section.

E. The department shall collect the one-time fee of twenty-five dollars upon the initial issuance of a special prestige license plate for Alpha Phi Alpha, and the department shall collect a fee of twenty-five dollars upon each renewal of a special prestige license plate for Alpha Phi Alpha, established under the provisions of this Section, and

forward such amount to the Louisiana District of Alpha Phi Alpha, Inc.

§ 463.73. Special prestige license plate; Louisiana public and private high schools

A. The secretary of the Department of Public Safety and Corrections shall establish a special prestige license plate for Louisiana public and private high schools which have a minimum of one hundred applicants for such plate. The license plate shall be restricted to passenger cars, pickup trucks, vans, and recreational vehicles. The license plate shall be of a color and design selected by the respective high school student council subject to the approval of the respective high school principal, provided that it is in compliance with R.S. 47:463(A)(3).

B. The prestige license plate shall be issued, upon application, to any citizen of Louisiana in the same manner as any other motor vehicle license plate and as provided for in this Section.

C. (1) The charge for the plate shall be the standard motor vehicle license fee imposed by Article VII, Section 5 of the Constitution of Louisiana and a handling fee of three dollars and fifty cents which shall be retained by the department to offset the administrative costs.

(2) A royalty fee of twenty-five dollars for the use of the institution's design by the department shall be paid to the institution for each license plate issued as provided in this Section.

D. The department shall collect the royalty fee for each public high school prestige license plate and shall forward such fee to the respective school board of the school for which the plate was issued. Royalty fees collected for private

high school prestige license plates shall be forwarded directly to such private school. The fees shall be used solely for school and instructional activities.

E. The secretary shall establish rules and regulations as are necessary to implement the provisions of this Section, including but not limited to rules and regulations governing the collection and disbursement of the monies generated from the one-time fees for these plates, the transfer and disposition of such license plates, the colors available, and the design criteria.

F. Upon the signing of a contract authorizing the use of the logo of any public or private high school, the secretary of the Department of Public Safety and Corrections shall establish prestige plates for such high school in accordance with the provisions of this Section. The contract shall include an agreement on the part of the school to use the royalty fee as provided in Subsection D of this Section.

§ 463.74. Special prestige license plates; Louisiana Agriculture

A. The secretary of the Department of Public Safety and Corrections shall establish a special prestige motor vehicle license plate for Louisiana Agriculture when the department has received a minimum of one hundred applications for such plate. The license plate shall be restricted to passenger cars, pickup trucks, and recreational vehicles. The license plate shall be of a color and design selected by the board of The Louisiana Foundation for Agriculture in the Classroom, Inc., provided it is in compliance with R.S. 47:463(A)(3).

B. The prestige license plate shall be issued, upon application, to any citizen of Louisiana in the same manner as any other motor vehicle license plate.

C. The fee for the plate shall be the standard motor vehicle registration license fee. However, no such plate shall be issued unless the application is accompanied by a donation of nineteen dollars for each plate and each renewal, to be distributed as provided by Subsection D herein and a handling fee of three dollars and fifty cents.

D. The department shall collect the donation for each prestige license plate and forward it to the nonprofit foundation called The Louisiana Foundation for Agriculture in the Classroom, Inc. The activities of The Louisiana Foundation for Agriculture in the Classroom, Inc. are hereby deemed a public purpose and shall qualify as a cooperative endeavor under the provisions of Article VII, Section 14(C) of the Constitution of Louisiana. The handling fee of three dollars and fifty cents as provided in Subsection C hereof shall be retained by the department to offset the administrative costs.

E. The monies received from the donations shall be used solely for educational materials, supplies, and training for the agriculture in the classroom program.

F. The secretary shall establish rules and regulations as are necessary to implement the provisions of this Section, including but not limited to rules and regulations governing the collection and disbursement of the donation, the transfer and disposition of such plates, the colors available, and the design criteria.

§ 463.75. Special prestige license plates; "Sons of Confederate Veterans"

A. The secretary of the Department of Public Safety and Corrections shall establish a special prestige license plate for motor vehicles, restricted to passenger cars, pickup trucks, recreational vehicles, and vans, which may be issued upon

application, to any member of a camp of the Sons of Confederate Veterans established in the state of Louisiana, provided that there is a minimum of one hundred applicants for such plate. This prestige license plate shall be of a color and design which is in compliance with the provisions of R.S. 47:463(A)(3). In addition, the plate shall bear the inscription "SONS OF CONFEDERATE VETERANS" and the logo of the Sons of Confederate Veterans. The department shall approve any logo, symbol, or design before such plate is produced.

B. Each applicant for the special prestige license plate, along with his application, will submit a certificate of good standing as a member of the Sons of Confederate Veterans signed and notarized by the camp commander of the Louisiana camp of which the applicant is a member.

C. The charge for the special license plate shall be twenty eight dollars and fifty cents which shall be assessed every two years in addition to the regular motor vehicle registration license fee charged as provided by R.S. 47:463.

D. The department shall collect the fee for the special prestige license plate and shall retain three dollars and fifty cents for handling purposes and the remainder of the twenty-eight dollar and fifty cent fee imposed by Subsection C of this Section shall be forwarded and credited to the State Board of Elementary and Secondary Education and shall be used solely for the purpose of providing Louisiana history textbooks which are to be used in approved elementary and secondary schools of this state.

E. The secretary shall promulgate rules and regulations in accordance with the Administrative Procedure Act to implement the provisions of this Section, including but not limited to rules and regulations governing the collection and disbursement of the fees and the transfer and disposition of the license plates. The superintendent of the Department of

Education shall promulgate rules and regulations in accordance with the Administrative Procedure Act to implement the provisions of this Section regarding the purchase and distribution of Louisiana history textbooks.

§ 463.76. Special prestige license plates; Jaycees

A. The secretary of the Department of Public Safety and Corrections shall establish a special prestige license plate which may be issued, upon application, to any citizen of Louisiana who is an active or past member of the Louisiana Jaycees, or any citizen who is a family member of a Jaycee, and only when the department has received a minimum of one hundred applications for such plate. These license plates shall be restricted to passenger cars, pickup trucks, vans, and recreational vehicles.

B. The plate shall be white with blue and gold lettering. The top of the plate shall bear the word "LOUISIANA". The Louisiana Jaycees logo shall appear on the left center portion followed by one or more numeric digits for registration purposes. The bottom of the plate shall bear the word "Jaycees".

C. These plates may be issued, upon application, in the same manner as any other motor vehicle license plate.

D. The charge for the plate shall be the standard motor vehicle license tax imposed by Article VII, Section 5 of the Constitution of Louisiana and a handling fee of three dollars and fifty cents to be retained by the department to offset a portion of the administrative costs.

E. A royalty fee of twenty-five dollars for the use of the official logo of the Louisiana Jaycees shall be collected by the department. Upon receipt of the fee provided in this Subsection, the secretary shall record the name of the

applicant and shall forward the fee directly to the Community Service Foundation of the Baton Rouge Junior Chamber of Commerce, Inc. within three months of receipt. The money shall be used solely for charitable purposes for residents of the state of Louisiana, including but not limited to donations made to Jaycee chapters statewide to fund their local community service projects, other nonprofit organizations recognized by the Internal Revenue Service as a 501(c)(3) organization, or for educational scholarships to accredited Louisiana universities.

F. The executive office of the Community Service Foundation of the Baton Rouge Junior Chamber of Commerce, Inc. shall be responsible for certifying applications on a form approved by the Department of Public Safety and Corrections to be submitted with other required registration papers. If a person holding a plate has his membership in the Louisiana Jaycees canceled for cause, the executive office of the Community Service Foundation of the Baton Rouge Junior Chamber of Commerce, Inc. shall notify the Department of Public Safety and Corrections so that the plate may be recovered and the registration canceled.

G. The secretary shall establish rules in accordance with the Administrative Procedure Act as are necessary to implement the provisions of this Section, including but not limited to rules governing the collection and disbursement of the donation and the transfer and disposition of such license plates.

H. Upon the signing of a contract authorizing the use of the logo of the Louisiana Jaycees, the secretary of the Department of Public Safety and Corrections shall establish prestige plates in accordance with the provisions of this Section. This contract shall include an agreement on the part of the Louisiana Jaycees to use the royalty fees as provided in Subsection E of this Section.

§ 463.77. Special prestige license plate; Captain Shreve High School

A. The secretary of the Department of Public Safety and Corrections shall establish a special prestige license plate for Captain Shreve High School, Shreveport, Louisiana, when the department has received a minimum of one hundred applicants for such plate. The license plate shall be restricted to passenger cars, pickup trucks, vans, and recreational vehicles. The license plate shall be of a color and design selected by the Captain Shreve High School Student Council subject to the approval of the Captain Shreve High School principal, provided that it is in compliance with R.S. 47:463(A)(3).

B. The prestige license plate shall be issued, upon application, to any citizen of Louisiana in the same manner as any other motor vehicle license plate and as provided for in this Section.

C. (1) A royalty fee of twenty-five dollars for the use of the school's design by the department shall be paid to the school for each license plate issued as provided in this Section.

(2) The charge for the plate shall be the standard motor vehicle license plate tax imposed by Article VII, Section 5 of the Constitution of Louisiana plus a handling fee of three dollars and fifty cents which shall be retained by the department to offset administrative costs.

D. The department shall collect the required royalty fee for each license plate and forward the fee to the Caddo Parish School Board. The monies received from the Caddo Parish School Board from the license plates shall be forwarded to the Captain Shreve High School to be used solely for school and instructional activities.

E. The secretary shall establish rules and regulations as are necessary to implement the provisions of this Section, including but not limited to rules and regulations governing the collection and disbursement of the monies generated from the one-time fee for these plates, the transfer and disposition of such license plates, the colors available, and the design criteria.

F. Upon the signing of a contract authorizing the use of the logo, the secretary of the Department of Public Safety and Corrections shall establish the prestige plates for Captain Shreve High School. This contract shall include an agreement on the part of such high school to use the royalty fees as provided in Subsection D of this Section.

§ 463.78. Special prestige license plates; Native Americans; scholarship fund

A. The secretary of the Department of Public Safety and Corrections shall establish prestige license plates for motor vehicles, restricted to passenger cars, pickup trucks, recreational vehicles, and vans, representing the Native American culture which shall have a minimum of one hundred applicants for such plate. The license plate shall be of a color and design selected by the Governor's Office of Indian Affairs, R.S. 46:2301 et seq., and be in compliance with the requirements of R.S. 47:463(A)(3).

B. The prestige license plates shall be issued upon application to any citizen of Louisiana in the same manner as any other motor vehicle license plate and shall be established only after one hundred applications for the plate have been received.

C. The fee for the plate shall be twenty-five dollars which shall be assessed every two years in addition to the standard motor vehicle registration license fee and a handling fee of

three dollars and fifty cents which shall be retained by the department to offset a portion of the administrative costs. The donation shall be made as provided in this Section.

D. (1) The department shall collect the additional twenty-five dollar donation and forward it to the Governor's Office of Indian Affairs. The activities of the Governor's Office of Indian Affairs with respect to the donations for the Native American prestige license plate are hereby deemed a public purpose and shall qualify as a cooperative endeavor under the provisions of Article VII, Section 14(C) of the Constitution of Louisiana.

(2) The monies received from the additional twenty-five dollar donation shall be used solely for academic or financial need-based scholarships for students of Native American ancestry.

(3) The Governor's Office of Indian Affairs shall be responsible for the disbursing of the funds and for establishing the scholarship program, including but not limited to adopting rules and regulations relative to academic standards for scholarship recipients.

E. The secretary shall adopt administrative rules to implement the provisions of this Section, including but not limited to rules and regulations governing the collection and disbursement of the donation, the transfer and disposition of such plates, the colors available, and the design criteria.

§ 463.79. Special prestige license plates; American-Italian Renaissance Foundation

A. The secretary of the Department of Public Safety and Corrections shall establish a special prestige license plate which shall be issued, upon application, to any citizen of Louisiana, and which shall have a minimum of one hundred

applicants for such plate prior to its establishment. The license plates shall be restricted to passenger cars, pickup trucks, vans, and recreational vehicles. The prestige license plate shall be of a color and design which is in general compliance with R.S. 47:463(A)(3). However, the plate shall bear a designating emblem of the American-Italian Renaissance Foundation, the design of which shall be determined by the board of directors of the American-Italian Renaissance Foundation.

B. The prestige license plates shall be issued in the same manner as other motor vehicle license plates.

C. The donation required by this Section shall be in addition to the regular motor vehicle registration license fee.

D. (1) No such plate shall be issued unless the application is accompanied by a donation of twenty-five dollars to be distributed as provided in this Subsection and a handling fee of three dollars and fifty cents to be retained by the department to offset a portion of the administrative costs. The department shall collect the donation for each license plate which shall be annually appropriated by the legislature to the office of cultural development, Department of Culture, Recreation and Tourism.

(2) An amount of monies equal to the total amount of donations shall be equally divided and disbursed annually by the office of cultural development to the American-Italian Renaissance Foundation in New Orleans. The monies shall be used solely for the expenses incurred in providing the educational, charitable, scientific, and maintenance services and programs provided in accordance with Article III of the Articles of Incorporation of the American-Italian Renaissance Foundation.

(3) The services of the American-Italian Renaissance Foundation are hereby deemed a public purpose and shall qualify as cooperative endeavors under the provisions of

Article VII, Section 14(C) of the Constitution of Louisiana.

E. The secretary shall establish rules and regulations as are necessary to implement the provisions of this Section, including but not limited to rules and regulations governing the collection and disbursement of the donation and the transfer and disposition of such license plates.

§ 463.80. Special prestige license plates; "Bellsouth Volunteers"

A. The secretary of the Department of Public Safety and Corrections shall establish prestige license plates for motor vehicles, restricted to passenger cars, pickup trucks, recreational vehicles, and vans, representing the Bellsouth Volunteers, and which shall have a minimum of one hundred applicants for such plate prior to its establishment. The license plate shall be of a color and design selected by the Bellsouth Telephone Volunteers-Pioneers of America organization and shall bear the legend "Bellsouth Volunteers", contain the Telephone Pioneers logo, and be in compliance with the requirements of R.S. 47:463(A)(3).

B. The prestige license plates shall be issued upon application to any citizen of Louisiana in the same manner as any other motor vehicle license plate.

C. The fee for the plate shall be the standard motor vehicle registration license fee and a handling fee of three dollars and fifty cents which shall be retained by the department to offset a portion of the administrative costs.

D. (1) A royalty fee of twenty-five dollars for the official Telephone Pioneer logo shall be collected by the department and shall be forwarded to the Bellsouth Volunteers-Telephone Pioneers of America organization for each plate issued as provided in this Section.

(2) The monies received from the royalty fee shall be used solely for Pioneer charitable activities.

E. The secretary shall adopt administrative rules to implement the provisions of this Section, including but not limited to rules and regulations governing the collection and disbursement of the royalty fee, the transfer and disposition of such plates, the colors available, and the design criteria.

F. Upon the signing of a contract authorizing the use of the Telephone Pioneer logo, the secretary of the Department of Public Safety and Corrections shall establish prestige motor vehicle plates in accordance with the provisions of this Section. This contract shall include an agreement on the part of the Bellsouth Volunteers to use the royalty fees as provided in Paragraph D(2) of this Section.

§ 463.81. Special prestige license plates; Fraternal Order of Police

A. The secretary of the Department of Public Safety and Corrections shall establish a prestige license plate for the Fraternal Order of Police when the department has received a minimum of one hundred applications for such plate. The license plate shall be issued to passenger cars, pickup trucks, vans, and recreational vehicles.

B. The charge for the plate shall be the standard motor vehicle license tax imposed by Article VII, Section 5 of the Constitution of Louisiana, and a handling fee of three dollars and fifty cents which shall be retained by the department to offset the administrative costs associated with such plate.

C. The secretary shall promulgate rules and regulations as are necessary to implement the provisions of this Section, including but not limited to the design and color of the plate.

§ 463.82. Special prestige license plates; Quota International

A. The secretary of the Department of Public Safety and Corrections shall establish a prestige license plate for the Quota International organization when the department has received a minimum of one hundred applications for such plate. The license plate shall be issued to passenger cars, pickup trucks, vans, and recreational vehicles. This prestige license plate shall be issued, upon application, to any citizen of Louisiana in the same manner as any other motor vehicle license plate.

B. The charge for the plate shall be the standard motor vehicle license tax imposed by Article VII, Section 5 of the Constitution of Louisiana, plus an additional annual royalty fee of twenty-five dollars and a handling fee of three dollars and fifty cents to be retained by the department to offset the administrative costs associated with such plate.

C. (1) The royalty fee of twenty-five dollars per year for the use of the official logo of the Quota International organization shall be collected by the department and shall be forwarded to the Louisiana Quota District 21 of the Quota International Organization for each prestige license plate issued as provided in this Section.

(2) Upon request of the Louisiana Quota District 21 of the Quota International Organization, the department shall calculate the number of Quota International prestige license plates sold and total monies collected from the sale of the plates in each Quota district within the state.

(3) The monies received from the royalty fees by Quota International shall be used solely to provide scholarships for students who major in the field of education to attend a Louisiana college or university.

D. The secretary shall promulgate rules and regulations in

accordance with the Administrative Procedure Act as are necessary to implement the provisions of this Section, including but not limited to the design of the plate and the disbursement of monies received from the sale of such plate.

§ 463.83. Special prestige license plates; Charity School of Nursing

A. The secretary of the Department of Public Safety and Corrections shall establish a special prestige license plate to be known as the Charity School of Nursing plate, provided there are a minimum of one thousand applicants for such plate. The license plate shall be restricted to passenger cars, pickup trucks, vans, and recreational vehicles. The license plate shall be of a color and design selected by the Charity Hospital School of Nursing Alumni Association, hereafter in this Section referred to as the "association", shall bear the name of the nursing school, and may contain the institution's logo. The association shall be prohibited from requesting any change to the design or color of the license plates within a five-year period after the date of acceptance of a specific color and design.

B. The prestige license plate shall be issued, upon application, to any citizen of Louisiana in the same manner as any other motor vehicle license plate.

C. A one-time royalty fee of twenty-five dollars for use of Charity School of Nursing's design shall be collected by the department and shall be forwarded to the association for each license plate issued as provided in this Section. The department shall also collect the standard motor vehicle registration license fee provided in R.S. 47:463 and a handling fee of three dollars and fifty cents.

D. The department shall collect the required royalty fee for each license plate and forward it to the association. The

handling fee of three dollars and fifty cents shall be retained by the department to offset a portion of the administrative costs.

E. The secretary shall establish rules and regulations as are necessary to implement the provisions of this Section, including but not limited to rules and regulations governing the collection and disbursement of royalty fees, the transfer and disposition of such license plates, the colors available, and the design criteria.

F. (1) The monies received from the royalty fees by the association shall be used solely for academic or financial need-based scholarships for students attending the Charity School of Nursing at Delgado. The association shall be responsible for disbursing the funds and for establishing the scholarship program.

(2) The president of the Charity Hospital School of Nursing Alumni Association or his designee and the dean of Charity School of Nursing at Delgado or his designee shall be responsible for establishing the procedures and criteria for awarding scholarships under this program.

G. Upon the signing of a contract authorizing the use of the design for the Charity School of Nursing's special prestige license plate, the secretary of the Department of Public Safety and Corrections shall establish the prestige license plate in accordance with the provisions of this Section. This contract shall include an agreement on the part of the association to use the royalty fees as provided in Subsection F of this Section.

§ 463.84. Special prestige license plates; Most Worshipful Prince Hall Grand Lodge F & AM organization

A. The secretary of the Department of Public Safety and

Corrections shall establish a special prestige license plate, to be known as the Most Worshipful Prince Hall Grand Lodge F & AM organization, hereafter referred to as the "organization", plate, subject to the provisions of this Section. The license plate shall be restricted to passenger cars, pickup trucks, vans, and recreational vehicles. The color and design of the license plate shall be selected by the Grand Master of the organization or his designee, shall contain the organization's logo, and shall otherwise be in compliance with the provisions of R.S. 47:463(A)(3). The organization shall be prohibited from requesting any change to the design and color of the license plates within a five-year period after the date of acceptance of a specific color and design.

B. The license plate shall be issued, upon application, to any member in good standing of the organization.

C. An annual royalty fee of twelve dollars and fifty cents for use of the organization's logo shall be collected from the applicant and forwarded to the organization for each license plate issued as provided in this Section. The department shall also collect the standard motor vehicle registration license fee provided for in R.S. 47:463, and a handling fee of three dollars and fifty cents. The handling fee shall be retained by the department to offset a portion of the administrative costs.

D. The monies received from the royalty fees by the organization shall be used solely for academic or financial need-based scholarships for students attending any public or private college or university in the state of Louisiana. Additionally, the monies may be used for the purchase of equipment and supplies for and the operation expenses of the youth camp known as Chicota Youth Camp. The organization shall be responsible for establishing and disbursing the funds for the scholarship program and for the disbursement of funds for Chicota Youth Camp.

E. The secretary shall establish a prestige license plate for

the organization in accordance with the provisions of this Section when all of the following conditions are met:

(1) All necessary contracts regarding use of the organization's logo have been executed.

(2) The secretary has received a minimum of one thousand applications for the license plate.

F. The secretary shall establish rules and regulations as are necessary to implement the provisions of this Section, including but not limited to rules and regulations governing the collection and disbursement of royalty fees, verification that an applicant is a member of the organization, the transfer and disposition of such license plates, the colors available, and the design criteria.

§ 463.85. Special prestige license plates; Esther Grand Chapter Order of Eastern Star-Prince Hall Affiliation

A. The secretary of the Department of Public Safety and Corrections shall establish a special prestige license plate to be known as the Esther Grand Chapter Order of Eastern Star-Prince Hall Affiliation, hereafter referred to as the "organization", plate, subject to the provisions of this Section. The license plate shall be restricted to passenger cars, pickup trucks, vans, and recreational vehicles. The color and design of the license plate shall be selected by the Grand Worthy Matron of the organization or her designee, shall contain the organization's logo, and shall otherwise be in compliance with the provisions of R.S. 47:463(A)(3). The organization shall be prohibited from requesting any change to the design and color of the license plates within a five-year period after the date of acceptance of a specific color and design.

B. The license plate shall be issued upon application to

any member in good standing of the organization.

C. An annual royalty fee of twelve dollars and fifty cents for use of the organization's logo shall be collected from the applicant and forwarded to the organization for each license plate issued as provided in this Section. The department shall also collect the standard motor vehicle registration license fee provided for in R.S. 47:463 and a handling fee of three dollars and fifty cents. The handling fee shall be retained by the department to offset a portion of the administrative costs.

D. The monies received from the royalty fees by the organization shall be used solely for academic or financial need-based scholarships for students attending any public or private college or university in the state of Louisiana. Additionally, the monies may be used for the purchase of equipment and supplies for and the operation expenses of the youth camp known as Chicota Youth Camp. The organization shall be responsible for establishing and disbursing the funds for the scholarship program and for the disbursement of funds for Chicota Youth Camp.

E. The secretary shall establish a prestige license plate for the organization in accordance with the provisions of this Section when both of the following conditions are met:

(1) All necessary contracts regarding use of the organization's logo have been executed.

(2) The secretary has received a minimum of one thousand applications for the license plate.

F. The secretary shall establish rules and regulations as are necessary to implement the provisions of this Section, including but not limited to rules and regulations governing the collection and disbursement of royalty fees, verification that an applicant is a member of the organization, the transfer and disposition of such license plates, the colors available, and the design criteria.

§ 463.86. Prestige license plates; white tail deer

A. The secretary of the Department of Public Safety and Corrections shall, subject to the provisions of this Section, establish a prestige license plate that bears a logo with a picture of a white tail deer. The license plate shall be restricted to passenger cars, pickup trucks, vans, and recreational vehicles.

B. The charge for this special license plate shall be ten dollars, which shall be assessed every two years, in addition to the regular license fee provided for in R.S. 47:463. The department shall also collect a handling fee of three dollars and fifty cents for each license plate, which it shall retain to offset a portion of the administrative costs.

C. The revenues realized from the additional ten dollar fee imposed pursuant to Subsection B of this Section shall be remitted to the state as provided by law. The state treasurer shall place an amount equal to the revenues collected pursuant to Subsection B in the Conservation Fund, after complying with the requirements of R.S. 56:10(B), and shall credit that amount to the "white tail deer account" which is created within the Conservation Fund pursuant to R.S. 56:10(B)(11).

D. The secretary shall establish a white tail deer prestige license plate when he has received a minimum of one thousand applications for the license plate.

E. The secretary shall establish rules and regulations as are necessary to implement the provisions of this Section.

§ 463.87. Special prestige license plates; Kiwanis International

A. The secretary of the Department of Public Safety and Corrections shall establish a special prestige license plate to be known as the Kiwanis International plate, provided there is a minimum of one thousand applicants for such plate. The license plate shall be restricted to passenger cars, pickup trucks, vans, and recreational vehicles. The license plate shall be of a color and design selected by Kiwanis International, provided that it is in compliance with R.S. 47:463(A)(3).

B. The prestige license plate shall be issued, upon application, to any citizen of Louisiana who is a member of Kiwanis International in the same manner as any other motor vehicle license plate. Each applicant who applies for the prestige plate under this Section shall present to the office of motor vehicles a letter from the applicant's district secretary certifying that the applicant is a member in good standing with Kiwanis International.

C. The department shall collect a one-time fee of twenty-five dollars for this prestige license plate. The department shall also collect the regular motor vehicle license fee provided for in R.S. 47:463 and a handling fee of three dollars and fifty cents. The handling fee shall be retained by the department to offset a portion of the administrative costs.

D. The department shall collect the one-time fee for each prestige license plate and forward it to Kiwanis International. The monies shall be used solely for programs supported by the Kiwanis District Foundation of Kiwanis International.

E. The secretary shall establish rules and regulations as are necessary to implement the provisions of this Section, including but not limited to rules and regulations governing the collection and disbursement of fees, the transfer and disposition of such license plates, the colors available, and the design criteria.

§ 463.88. Special prestige license plates; Kappa Alpha Psi Fraternity, Inc.

A. The secretary of the Department of Public Safety and Corrections shall establish a special prestige license plate, to be known as the Kappa Alpha Psi Fraternity, Incorporated plate, provided there is a minimum of one thousand applicants for such plate. The license plate shall be restricted to passenger cars, pickup trucks, vans, and recreational vehicles. The license plate shall be of a color and design selected by the local alumni chapter of the Kappa Alpha Psi Fraternity, Incorporated, provided that it is in compliance with R.S. 47:463(A)(3).

B. The prestige license plate shall be issued, upon application, to any citizen of Louisiana who is a member of the fraternity. Each person who applies for the prestige license plate shall present to the office of motor vehicles his membership identification card indicating such membership.

C. The department shall collect a one-time fee of twenty-five dollars for this prestige license plate. The department shall also collect the regular motor vehicle license fee provided for in R.S. 47:463 and a handling fee of three dollars and fifty cents. The department shall retain the handling fee to offset a portion of administrative costs.

D. The department shall collect the one-time fee for the prestige license plate and forward the fee to the state treasurer for immediate deposit in the state treasury.

E. After compliance with the requirements of Article VII, Section 9(B) of the Constitution of Louisiana relative to the Bond Security and Redemption Fund, an amount equal to the monies received by the state treasury pursuant to Subsection D of this Section, shall be deposited into the Kappa Kamp Fund, which is hereby created as a special fund in the state treasury and hereafter referred to as the "fund". All unexpended and unencumbered monies in the fund at the end

of the fiscal year shall remain in the fund. Monies in the fund shall be invested by the state treasurer in the same manner as monies in the state general fund and interest earned on the investment of such monies shall be deposited into the fund. Monies in the fund shall only be withdrawn pursuant to an appropriation by the legislature solely for the purposes provided by this Section.

F. The monies in the Kappa Kamp Fund shall be used solely for inner-city youth in grades six through ten to participate in Kappa Kamp, a summer enrichment camp sponsored by Kappa Alpha Psi Fraternity, Incorporated.

G. The secretary shall establish rules and regulations as are necessary to implement the provisions of this Section, including but not limited to rules and regulations governing the collection and disbursement of fees, the transfer and disposition of such license plates, the colors available, and the design criteria.

§ 463.89. Special prestige license plates; Crescent City

A. The secretary of the Department of Public Safety and Corrections shall establish a special prestige license plate, to be known as the Crescent City plate, provided there is a minimum of one thousand applicants for such plate. The license plate shall be restricted to passenger cars, pickup trucks, vans, and recreational vehicles. The license plate shall be of a color and design selected by the Board of Directors of Friends of the New Orleans Recreation Department and shall comply with R.S. 47:463(A)(3).

B. The license plate shall be issued, upon application, to any citizen of Louisiana in the same manner as any other motor vehicle license plate.

C. An annual fee of twelve dollars and fifty cents shall be

collected by the department and shall be forwarded to the Friends of the New Orleans Recreation Department for each license plate issued in accordance with the provisions of this Section. The department shall also collect the standard motor vehicle registration license fee provided for in R.S. 47:463, and a handling fee of three dollars and fifty cents. The department shall retain the handling fee to offset a portion of the administrative costs.

D. The monies received by Friends of the New Orleans Recreation Department from collection of the annual fee as provided in Subsection C of this Section shall be used solely for the purchase of equipment and supplies for the New Orleans Recreation Department.

E. The secretary shall establish rules and regulations as are necessary to implement the provisions of this Section, including but not limited to rules and regulations governing the collection and disbursement of fees, the transfer and disposition of such license plates, and the colors available and the design criteria.

§ 463.90. Special prestige license plate for Beta Sigma Phi

A. Notwithstanding the provisions of R.S. 47:463.72, the secretary of the Department of Public Safety and Corrections shall establish a special prestige motor vehicle license plate for Beta Sigma Phi in accordance with the provisions of this Section. The license plates shall be restricted to passenger cars, pickup trucks, vans, and recreational vehicles. The license plate shall be of a color and design approved by the Beta Sigma Phi Disaster Relief Fund, provided that it is in compliance with R.S. 47:463(A)(3), and shall include the Beta Sigma Phi logo.

B. The prestige license plates shall be issued, upon application, to any member of Beta Sigma Phi in the same

manner as any other motor vehicle license plate, provided that there is a minimum of one thousand applicants for such plate.

C. A fee of twenty-five dollars shall be paid for the issuance and renewal of each plate, which fee shall be in addition to the regular motor vehicle registration license fee, and a handling fee of three dollars and fifty cents. The handling fee shall be retained by the department to offset a portion of the administrative costs.

D. A royalty fee of twenty-five dollars for the use of the official logo of Beta Sigma Phi shall be collected by the department upon the issuance and renewal of each plate and, beginning July 1, 2001, shall be forwarded to the Beta Sigma Phi Disaster Relief Fund.

E. The secretary shall establish such rules and regulations as are necessary to implement the provisions of this Section, including but not limited to rules and regulations governing the collection and disbursement of royalty fees, the transfer and disposition of such license plates, the colors available, and the design criteria.

F. The monies received from the royalty fees shall be used solely for the Beta Sigma Phi Disaster Relief Fund.

G. There shall be a contract authorizing the use of the Beta Sigma Phi logo and establishing the prestige motor vehicle license plates in accordance with the provisions of this Section. There shall also be an agreement on the part of the Beta Sigma Phi to use the royalty fees as provided in Subsection F of this Section.

§ 463.91. Special prestige license plate; Louisiana Nurses Foundation

A. The secretary of the Department of Public Safety and

Corrections shall establish a special prestige motor vehicle license plate for the Louisiana Nurses Foundation when the department has received a minimum of one thousand applications for such plate. The license plate shall be restricted to passenger cars, pickup trucks, vans, and recreational vehicles. The license plate shall be of a color and design selected by the Louisiana Nurses Foundation, provided that it is in compliance with R.S. 47:463(A)(3).

B. The prestige license plate shall be issued, upon application, to any citizen of Louisiana in the same manner as any other motor vehicle license plate.

C. The charge for this special license plate shall be the standard motor vehicle license tax imposed by Article VII, Section 5 of the Constitution of Louisiana, plus an annual royalty fee of twenty-five dollars for each plate, and a handling fee of three dollars and fifty cents which shall be retained by the department to offset administrative costs.

D. The annual royalty fee shall be collected by the department and forwarded to the Louisiana Nurses Foundation for use of the foundation's logo. The monies received from the royalty fees shall be used solely for the support of programs established and administered by the Louisiana Nurses Foundation.

E. Upon the signing of a contract authorizing the use of the logo of the Louisiana Nurses Foundation, the secretary shall establish the special prestige plate in accordance with this Section. The contract shall include an agreement on the part of the Louisiana Nurses Foundation to use the royalty fees as provided for in this Section.

F. The secretary shall promulgate rules and regulations as are necessary to implement the provisions of this Section.

§ 463.92. Special prestige license plates; Elks

A. The secretary of the Department of Public Safety and Corrections shall establish prestige license plates for motor vehicles, which may be issued upon application of any citizen of Louisiana who is a member of the Benevolent Protective Order of Elks or the Improved Benevolent Protective Order of Elks of the World, provided that there is a minimum of one thousand applicants for such plate. These license plates shall be restricted to passenger cars, pickup trucks, recreational vehicles, and vans. The license plate shall be of a color and design selected by the Benevolent Protective Order of Elks or the Improved Benevolent Protective Order of Elks of the World provided it is in compliance with R.S. 47:463(A)(3).

B. The charge for this special license plate shall be the standard motor vehicle license tax imposed by Article VII, Section 5 of the Constitution of Louisiana, and a handling fee of three dollars and fifty cents which shall be retained by the department to offset the administrative costs associated with such plate.

C. The secretary shall promulgate rules and regulations necessary to implement the provisions of this Section in accordance with the Administrative Procedure Act, including rules and regulations governing the transfer and disposition of the license plates upon the death of the recipient and governing the design of the plate.

§ 463.93. Special prestige license plates; Upper Room Bible Church

A. The secretary of the Department of Public Safety and Corrections shall establish special prestige license plates which may be issued, upon application, to any member of the Upper Room Bible Church, provided that there is a minimum

of one thousand applicants for such plate. The license plates shall be restricted to passenger cars, pickup trucks, recreational vehicles, and vans. The license plate shall be colored and design selected by the Upper Room Bible Church, provided that it is in compliance with R.S. 47:463(A)(3).

B. The charge for this special license plate shall be a one-time fee of three dollars for each plate, which shall be in addition to the regular motor vehicle registration license tax and a handling fee of three dollars and fifty cents. The handling fee shall be retained by the department to offset a portion of the administrative cost.

C. The secretary shall promulgate rules and regulations necessary to implement the provisions of this Section in accordance with the Administrative Procedure Act.

D. The secretary shall establish a prestige license plate for the organization in accordance with the provisions of this Section when all of the following conditions are met:

(1) All necessary contracts regarding use of the Upper Room Bible Church logo have been executed.

(2) The secretary has received a minimum of one thousand applications for the license plate.

§ 463.94. Special prestige license plates; Camp Woodmen

A. The secretary of the Department of Public Safety and Corrections shall establish a special prestige motor vehicle license plate for Camp Woodmen when the department has received a minimum of one thousand applications for such plate. The license plate shall be restricted to passenger cars, pickup trucks, vans, and recreational vehicles. The license plate shall be of a color and design selected by the Camp Woodmen, provided that it is in compliance with R.S.

47:463(A)(3).

B. The prestige license plate shall be issued, upon application, to any citizen of Louisiana in the same manner as any other motor vehicle license plate.

C. The charge for this special license plate shall be the standard motor vehicle license tax imposed by Article VII, Section 5 of the Constitution of Louisiana, plus a one-time royalty fee of twenty-five dollars for each plate for the use of the official logo of the Camp Woodmen or Woodmen of the World, and a handling fee of three dollars and fifty cents which shall be retained by the department to offset administrative costs.

D. The department shall collect the required royalty fee for each license plate and, by electronic funds transfer, on the thirtieth day of each month forward the monies collected as follows:

(1) To South Louisiana Woodmen of the World Youth Camp, Inc., monies from license plates purchased by persons living in the parishes of Avoyelles, Allen, Evangeline, Beauregard (excluding cities and townships north of Merryville), Calcasieu, Cameron, Jefferson Davis, Acadia, Vermilion, St. Landry, Lafayette, St. Martin, Iberia, St. Mary, Pointe Coupee, West Feliciana, East Feliciana, St. Helena, Tangipahoa, Washington, St. Tammany, Livingston, East Baton Rouge, West Baton Rouge, Iberville, Ascension, Assumption, Lafourche, Terrebonne, St. James, St. John the Baptist, St. Charles, Jefferson, Orleans, Plaquemines, and St. Bernard.

(2) To North Louisiana Woodmen of the World Youth Camp, Inc., monies from license plates purchased by persons living in the parishes of Vernon, Rapides, Beauregard (excluding cities and townships south of DeRidder), Sabine, Natchitoches, Winn, Grant, LaSalle, Catahoula, Concordia, Tensas, Franklin, Caldwell, Jackson,

Bienville, Red River, DeSoto, Caddo, Bossier, Webster, Claiborne, Union, Lincoln, Ouachita, Richland, Morehouse, West Carroll, East Carroll, and Madison.

E. The monies received from the royalty fee shall be used solely for camping programs and equipment utilized in implementing and continuing programs as well as the overall benefit of the property and operations of the South Louisiana Woodmen of the World Youth Camp, Inc. and North Louisiana Woodmen of the World Youth Camp, Inc.

F. Upon the signing of a contract authorizing the use of the logo of the Camp Woodmen or Woodmen of the World, the secretary shall establish the special prestige plate in accordance with this Section. The contract shall include an agreement on the part of the Camp Woodmen or Woodmen of the World to use the royalty fees as provided for in this Section.

G. The secretary shall promulgate rules and regulations as are necessary to implement the provisions of this Section.

§ 463.95. Special prestige license plates; "Unlocking Autism"

A. The secretary of the Department of Public Safety and Corrections shall establish a prestige license plate for "Unlocking Autism" when the department has received a minimum of one thousand applications for such plate. The license plate shall be issued to passenger cars, pickup trucks, vans, and recreational vehicles. This prestige license plate shall be issued, upon application, to any citizen of Louisiana in the same manner as any other motor vehicle license plate.

B. The charge for the plate shall be the standard motor vehicle license tax imposed by Article VII, Section 5 of the Constitution of Louisiana, plus an additional royalty fee of

twenty dollars, and a handling fee of three dollars and fifty cents which shall be retained by the department to offset the administrative costs associated with such plate.

C. The royalty fee of twenty dollars for the use of the official logo of "Unlocking Autism" shall be collected by the department and forwarded to "Unlocking Autism" for each prestige license plate issued as provided in this Section.

D. The secretary shall promulgate rules and regulations as are necessary to implement the provisions of this Section, including but not limited to the design and color of the plate.

§ 463.96. Special prestige license plates; Festival International de Louisiane

A. The secretary of the Department of Public Safety and Corrections shall establish a special prestige license plate for the Festival International de Louisiane, provided there are a minimum of one thousand applicants for such plate. The license plate shall be restricted to passenger cars, pickup trucks, vans, and recreational vehicles. The license plate shall be a color and design selected by the Board of Directors of Festival International de Louisiane, a nonprofit corporation qualified as tax exempt under Section 501(c)(3) of the Internal Revenue Code, provided it is in compliance with R.S. 47:463(A)(3) and shall bear the words "Festival International de Louisiane".

B. The prestige license plate shall be issued, upon application, to any citizen of Louisiana in the same manner as any other motor vehicle license plate.

C. The annual fee for this special prestige license plate shall be twenty-five dollars, in addition to the regular motor vehicle license fee provided in R.S. 47:463, to be distributed in the manner set forth in Subsection D of this Section and a

one-time handling fee of three dollars and fifty cents to be retained by the department to offset a portion of administrative costs.

D. The department shall collect the fee for each prestige license plate and shall forward such monies to Festival International de Louisiane, to be used solely for administrative purposes, including but not limited to the lease or purchase of supplies and equipment and for programming, production, and marketing needs of Festival International de Louisiane.

E. The secretary shall establish rules and regulations as are necessary to implement the provisions of this Section, including but not limited to rules and regulations governing the collection and disbursement of fees, the transfer and disposition of such license plates, the colors available, and the design criteria.

§ 463.97. Special prestige license plate; retired employees of the Department of Transportation and Development

A. The secretary of the Department of Public Safety and Corrections shall establish a special prestige license plate, to be known as the retired employees of the Department of Transportation and Development, provided there is a minimum of one thousand applicants for such plate. The license plate shall be restricted to passenger cars, pickup trucks, vans, and recreational vehicles. The color and design of such license plate shall be in compliance with the provisions of R.S. 47:463(A)(3) and shall contain the Department of Transportation and Development's logo and bear the words "Retired from DOTD".

B. Upon application from a retired employee of the Department of Transportation and Development, the secretary shall issue such license plate in the same manner as

any other motor vehicle license plate.

C. The fee for the license plate shall be the standard registration license fee and a handling fee of three dollars and fifty cents. The handling fee shall be retained by the department to offset a portion of administrative costs.

D. The secretary shall establish rules and regulations as are necessary to implement the provisions of this Section, including but not limited to rules and regulations for verification of the applicant's retirement from the Department of Transportation and Development, the collection of the administrative fee, the transfer and disposition of such license plates, the colors available, and the design criteria.

§ 463.98. Special Prestige license plate; Louisiana Water and Waste Water Operators

A. The secretary of the Department of Public Safety and Corrections shall establish a special prestige license plate, to be known as the Louisiana Water and Waste Water Operators plate, provided there is a minimum of one thousand applicants for such plate. The license plate shall be restricted to passenger cars, pickup trucks, vans, and recreational vehicles. The color and design of such license plate shall be in compliance with the provisions of R.S. 47:463(A)(3).

B. The license plate shall be issued, upon application, to any water or waste water operator.

C. The fee for the license plate shall be the standard registration license fee and a handling fee of three dollars and fifty cents. The handling fee shall be retained by the department to offset a portion of administrative costs.

D. The secretary shall establish rules and regulations as are necessary to implement the provisions of this Section,

including but not limited to rules and regulations for verification that an applicant is a water or waste water operator, the collection of the administrative fee, the transfer and disposition of such license plates, the colors available, and the design criteria.

§ 463.99. Special prestige license plates; Rotary International

A. The secretary of the Department of Public Safety and Corrections shall establish a special prestige license plate, to be known as the Rotary International plate, provided there are a minimum of one thousand applicants for such plate. The license plate shall be restricted to passenger cars, pickup trucks, vans, and recreational vehicles. The license plate shall be a color and design selected by Rotary International, provided that it is in compliance with R.S. 47:463(A)(3).

B. The prestige license plate shall be issued, upon application, to any citizen of Louisiana who is a member of Rotary International in the same manner as any other motor vehicle license plate.

C. The one-time fee for this prestige license plate shall be twenty-five dollars, in addition to the regular motor vehicle license fee and a handling fee of three dollars and fifty cents. The handling fee shall be retained by the department to offset a portion of administrative costs. Each applicant who applies for the prestige plate under this Section shall present to the office of motor vehicles a letter from the applicant's district secretary certifying that the applicant is a member in good standing with Rotary International.

D. The department shall collect the fee for each prestige license plate and forward it to the Rotary Foundation of Rotary International. The monies shall be used solely for programs supported by the Rotary Foundation of Rotary International.

E. The secretary shall establish rules and regulations as are necessary to implement the provisions of this Section, including but not limited to rules and regulations governing the collection and disbursement of fees, the transfer and disposition of such license plates, the colors available, and the design criteria.

§ 463.100. Special prestige license plates; U.S. Naval Academy

A. The secretary of the Department of Public Safety and Corrections shall establish a special prestige license plate, to be known as the U.S. Naval Academy plate, subject to the provisions of this Section. The license plate shall be restricted to passenger cars, pickup trucks, vans, and recreational vehicles. The license plate shall be a color and design selected by the president of the Southeast Louisiana and Southwest Mississippi Gulf Coast Chapter of the U.S. Naval Academy Alumni Association, shall bear the name of the academy, and shall contain the academy's seal. The Southeast Louisiana and Southwest Mississippi Gulf Coast Chapter of the U.S. Naval Academy Alumni Association shall be prohibited from requesting any change to the design and color of the license plates within a five-year period after the date of acceptance of a specific color and design.

B. The license plate shall be issued upon application to any member or auxiliary member in good standing of the Southeast Louisiana and Southwest Mississippi Gulf Coast Chapter of the U.S. Naval Academy Alumni Association.

C. A one-time royalty fee of twenty-five dollars for use of the U.S. Naval Academy's seal shall be collected from the applicant and forwarded to the Southeast Louisiana and Southwest Mississippi Gulf Coast Chapter of the U.S. Naval Academy Alumni Association for each license plate issued as provided in this Section. The department shall also collect the standard motor vehicle registration license fee provided for in

R.S. 47:463 and a handling fee of three dollars and fifty cents. The handling fee shall be retained by the department to offset a portion of the administrative costs.

D. The secretary shall establish a prestige license plate for the U.S. Naval Academy in accordance with the provisions of this Section when all of the following conditions are met:

(1) All necessary contracts regarding use of the seal have been executed.

(2) The secretary has received a minimum of one thousand applications for the license plate.

E. The secretary shall establish rules and regulations as are necessary to implement the provisions of this Section, including but not limited to rules and regulations governing the collection and disbursement of royalty fees, verification that an applicant is a member or auxiliary member of the association, the transfer and disposition of such license plates, the colors available, and the design criteria.

§ 463.101. Special prestige license plates; American Legion

A. The secretary of the Department of Public Safety and Corrections shall establish prestige license plates for motor vehicles, which may be issued upon application of any citizen of Louisiana who is a member of the American Legion, provided that there is a minimum of one thousand applicants for such plate. These license plates shall be restricted to passenger cars, pickup trucks, recreational vehicles, and vans. The license plate shall be of a color and design selected by the American Legion of Louisiana provided it is in compliance with R.S. 47:463(A)(3).

B. The charge for this special license plate shall be the standard motor vehicle license tax imposed by Article VII,

Section 5 of the Constitution of Louisiana, and a handling fee of three dollars and fifty cents which shall be retained by the department to offset the administrative costs associated with such plate.

C. The secretary shall promulgate rules and regulations necessary to implement the provisions of this Section in accordance with the Administrative Procedure Act, including rules and regulations governing the transfer and disposition of the license plates upon the death of the recipient and governing the design of the plate.

§ 463.102. Special prestige license plates; Rotary District 6200

A. The secretary of the Department of Public Safety and Corrections shall establish a special prestige license plate, to be known as the Rotary District 6200, hereafter referred to as the "organization", plate, subject to the provisions of this Section. The license plate shall be restricted to passenger cars, pickup trucks, vans, and recreational vehicles. The color and design of the license plate shall be selected by Rotary District 6200. The license plate shall contain the organization's logo, provided it is in compliance with R.S. 47:463(A)(3), and shall bear the words "SERVICE ABOVE SELF".

B. The license plate shall be issued, upon application, to any member in good standing of the organization.

C. A one-time royalty fee of twenty-five dollars for use of the organization's logo shall be collected from the applicant and forwarded to the organization for each license plate issued as provided in this Section. The department shall also collect the standard motor vehicle registration license fee provided for in R.S. 47:463 and a handling fee of three dollars and fifty cents. The handling fee shall be retained by

the department to offset a portion of administrative costs.

D. The monies received from the royalty fees by the organization shall be used solely for charitable purposes for residents of the state of Louisiana. The organization shall be responsible for establishing and disbursing the funds for charitable purposes.

E. The secretary shall establish a prestige license plate for the organization in accordance with the provisions of this Section when all of the following conditions are met:

(1) All necessary contracts regarding use of the organization's logo have been executed.

(2) The secretary has received a minimum of one thousand applications for the license plate.

F. The secretary shall establish rules and regulations as are necessary to implement the provisions of this Section, including but not limited to rules and regulations governing the collection and disbursement of royalty fees, verification that an applicant is a member of the organization, the transfer and disposition of such license plates, the colors available, and the design criteria.

§ 463.103. Special prestige license plates; Delta Sigma Theta Sorority

A. The secretary of the Department of Public Safety and Corrections shall establish a special prestige license plate, to be known as the Delta Sigma Theta Sorority plate, subject to the provisions of this Section. The license plate shall be restricted to passenger cars, pickup trucks, vans, and recreational vehicles. The color and design of the license plate shall be selected by the executive committee of the Delta Sigma Theta New Orleans Alumnae Chapter Foundation, Inc. provided it is in compliance with R.S.

47:463(A)(3), and shall include the logo of the sorority. All lettering and numbering on such prestige plates shall be in the color red. The organization shall be prohibited from requesting any change to the design and color of the license plates within a five-year period after the date of acceptance of a specific color and design.

B. The license plate shall be issued, upon application, to any member of the Delta Sigma Theta Sorority.

C. An annual royalty fee of twenty-five dollars for use of the sorority's logo shall be collected from the applicant and forwarded to the Delta Sigma Theta New Orleans Alumnae Chapter Foundation, Inc. for each license plate issued as provided in this Section. The department shall also collect the standard registration license fee provided for in R.S. 47:463 and a handling fee of three dollars and fifty cents. The handling fee shall be retained by the department to offset a portion of administrative costs.

D. The monies received from the royalty fees for each initial issuance of a license plate and for each license plate renewal by the Delta Sigma Theta New Orleans Alumnae Chapter Foundation, Inc. shall be retained by the foundation. The monies shall be used to support local chapter activities.

E. The secretary shall establish a prestige license plate in accordance with the provisions of this Section when all of the following conditions are met:

(1) All necessary contracts regarding use of the Delta Sigma Theta Sorority's logo have been executed.

(2) The secretary has received a minimum of one thousand applications for the license plate.

F. The secretary shall establish rules and regulations as are necessary to implement the provisions of this Section, including but not limited to rules and regulations governing the collection and disbursement of royalty fees, verification

that an applicant is a member of the Delta Sigma Theta Sorority, the transfer and disposition of such license plates, the colors available, and the design criteria.

§ 463.104. Special prestige license plates; Seniors-Our Heritage

A. The secretary of the Department of Public Safety and Corrections shall establish a special prestige license plate, to be known as the Seniors-Our Heritage plate, subject to the provisions of this Section. The license plate shall be restricted to passenger cars, pickup trucks, vans, and recreational vehicles. The color and design of the license plate shall be selected by the secretary provided it is in compliance with R.S. 47:463(A)(3).

B. The license plate shall be issued, upon application, to any resident of Louisiana.

C. An annual fee of fifty dollars shall be collected from the applicant and forwarded to the Medicaid Trust Fund for the Elderly, created by R.S. 46:2691, for each license plate issued as provided in this Section. The department shall also collect the standard registration license fee provided for in R.S. 47:463 and a handling fee of three dollars and fifty cents. The handling fee shall be retained by the department to offset a portion of administrative costs.

D. The monies received from the fees by the Medicaid Trust Fund for the Elderly shall be used to support health care services for the elderly under the Medicaid program.

E. The secretary shall establish a prestige license plate for Seniors-Our Heritage in accordance with this Section when the secretary has received a minimum of one thousand applications for the license plate.

F. The secretary shall establish rules and regulations as

are necessary to implement the provisions of this Section, including but not limited to rules and regulations governing the collection and disbursement of fees, verification that an applicant is a resident of Louisiana, the transfer and disposition of such license plates, the colors available, and the design criteria.

§ 463.105. Special prestige license plates; Laborers' International Union of North America (LIUNA)

A. The secretary of the Department of Public Safety and Corrections shall establish a special prestige license plate, to be known as the Laborers' International Union of North America (LIUNA) organization prestige license plate, hereafter referred to as the organization plate subject to the provisions of this Section. The license plate shall be restricted to passenger cars, pickup trucks, vans, recreational vehicles, and motorcycles. The color and design of the license plate shall be selected by the president of the organization, or his designee, shall contain the organization's logo, and shall otherwise be in compliance with the provisions of R.S. 47:463(A)(3). The organization shall be prohibited from requesting any change to the design and color of the license plates within a five-year period after the date of acceptance of a specific color and design.

B. The license plate shall be issued, upon application, to any member in good standing of the organization.

C. The department shall collect the standard motor vehicle registration license fee provided for in R.S. 47:463 and a handling fee of three dollars and fifty cents. The handling fee shall be retained by the department to offset a portion of the administrative costs.

D. The secretary shall establish a prestige license plate for the organization in accordance with the provisions of this

Section when all of the following conditions are met:

(1) All necessary contracts regarding use of the organization's logo have been executed.

(2) The secretary has received a minimum of one thousand applications for the license plate.

E. The secretary shall establish rules and regulations as are necessary to implement the provisions of this Section, including but not limited to rules and regulations governing the verification that an applicant is a member of the organization, the transfer and disposition of such license plates, the colors available, and the design criteria.

§ 463.106. Special prestige license plates; Omega Psi Phi fraternity

A. The secretary of the Department of Public Safety and Corrections shall establish a special prestige license plate, to be known as the Omega Psi Phi fraternity plate, subject to the provisions of this Section. The license plate shall be restricted to passenger cars, pickup trucks, vans, and recreational vehicles. The color and design of the license plate shall be selected by Omega Psi Phi fraternity, hereafter referred to as the "organization". The license plate shall contain the organization's logo and shall otherwise be in compliance with the provisions of R.S. 47:463(A)(3).

B. The license plate shall be issued, upon application, to any member in good standing of the organization.

C. An annual royalty fee of twenty-five dollars for use of the organization's logo shall be collected from the applicant and forwarded to the Lambda Kappa Kappa chapter of Omega Psi Phi fraternity for each license plate issued as provided in this Section. The department shall also collect the standard motor vehicle registration license fee provided for in

R.S. 47:463 and a handling fee of three dollars and fifty cents. The handling fee shall be retained by the department to offset a portion of administrative costs.

D. The monies received from the royalty fees by the Lambda Kappa Kappa chapter of Omega Psi Phi fraternity shall be disbursed in accordance with the following provisions:

(1) For each initial issuance of a license plate, Lambda Kappa Kappa chapter of Omega Psi Phi fraternity shall forward twelve dollars and fifty cents of the royalty fee to Unified Omegas of Louisiana.

(2) For each initial issuance of a license plate, Lambda Kappa Kappa chapter of Omega Psi Phi fraternity shall retain twelve dollars and fifty cents of the royalty fee. For each license plate renewal, Lambda Kappa Kappa chapter of Omega Psi Phi fraternity shall retain the entire royalty fee. The monies received from the royalty fees by Lambda Kappa Kappa chapter of Omega Psi Phi fraternity shall be used to support scholarship programs.

E. The secretary shall establish a prestige license plate for the organization in accordance with the provisions of this Section when all of the following conditions are met:

(1) All necessary contracts regarding use of the Omega Psi Phi fraternity logo have been executed.

(2) The secretary has received a minimum of one thousand applications for the license plate.

F. The secretary shall establish rules and regulations as are necessary to implement the provisions of this Section, including but not limited to rules and regulations governing the collection and disbursement of royalty fees, verification that an applicant is a member of the organization, the transfer and disposition of such license plates, the colors available, and the design criteria.

§ 463.107. Special prestige license plates; Alpha Kappa Alpha Sorority

A. The secretary of the Department of Public Safety and Corrections shall establish a special prestige license plate, to be known as the Alpha Kappa Alpha Sorority plate, subject to the provisions of this Section. The license plate shall be restricted to passenger cars, pickup trucks, vans, and recreational vehicles. The color and design of the license plate shall be selected by the executive committee of Nu Gamma Omega Educational and Charitable Foundation, Inc. provided it is in compliance with R.S. 47:463(A)(3), and shall include the logo of the sorority. All lettering and numbering on such prestige plate shall be in the color green. The organization shall be prohibited from requesting any change to the design and color of the license plates within a five- year period after the date of acceptance of a specific color and design.

B. The license plate shall be issued, upon application, to any member of the Alpha Kappa Alpha Sorority.

C. An annual royalty fee of twenty-five dollars for use of the sorority's logo shall be collected from the applicant and forwarded to Nu Gamma Omega Educational and Charitable Foundation, Inc. for each license plate issued as provided in this Section. The department shall also collect the standard registration license fee provided for in R.S. 47:463 and a handling fee of three dollars and fifty cents. The handling fee shall be retained by the department to offset a portion of administrative costs.

D. The monies received from the royalty fees by Nu Gamma Omega Educational and Charitable Foundation, Inc. shall be disbursed in accordance with the following provisions:

(1) For each initial issuance of a license plate, Nu Gamma Omega Educational and Charitable Foundation, Inc. shall forward seven dollars of the royalty fee to the Alpha Kappa Alpha Sorority corporate office.

(2) For each initial issuance of a license plate, Nu Gamma Omega Educational and Charitable Foundation, Inc. shall forward three dollars of the royalty fee to the Alpha Kappa Alpha regional office.

(3) For each initial issuance of a license plate, Nu Gamma Omega Educational and Charitable Foundation, Inc. shall retain fifteen dollars of the royalty fee. For each license plate renewal, Nu Gamma Omega Educational and Charitable Foundation, Inc. shall retain the entire royalty fee. The monies received from the royalty fees by Nu Gamma Omega Educational and Charitable Foundation, Inc. shall be used to support local chapter activities and scholarship programs.

E. The secretary shall establish a prestige license plate in accordance with the provisions of this Section when all of the following conditions are met:

(1) All necessary contracts regarding use of the Alpha Kappa Alpha Sorority's logo have been executed.

(2) The secretary has received a minimum of one thousand applications for the license plate.

F. The secretary shall establish rules and regulations as are necessary to implement the provisions of this Section, including but not limited to rules and regulations governing the collection and disbursement of royalty fees, verification that an applicant is a member of the Alpha Kappa Alpha Sorority, the transfer and disposition of such license plates, the colors available, and the design criteria.

§ 463.108. Special prestige license plate; breast cancer awareness

A. The secretary of the Department of Public Safety and Corrections shall establish a special prestige motor vehicle license plate for breast cancer awareness when the department has received a minimum of one thousand applications for such plate. The license plate shall be restricted to passenger cars, pickup trucks, vans, and recreational vehicles. The license plate shall be of a color and design selected by the Louisiana Susan G. Komen Affiliates, provided that it is in compliance with R.S. 47:463(A)(3).

B. The prestige license plate shall be issued, upon application, to any citizen of Louisiana in the same manner as any other motor vehicle license plate.

C. The charge for this special license plate shall be the standard motor vehicle license tax imposed by Article VII, Section 5 of the Constitution of Louisiana, plus an annual royalty fee of twenty-five dollars for each plate, and a handling fee of three dollars and fifty cents which shall be retained by the department to offset administrative costs.

D. The annual royalty fee shall be collected by the department and forwarded to the Louisiana Susan G. Komen Affiliates for use of the group's logo. The monies received from the royalty fees shall be divided equally among the Susan G. Komen Affiliate groups in Louisiana and shall be used solely for the support of programs established and administered by the Louisiana Susan G. Komen Affiliates.

E. Upon the signing of a contract authorizing the use of the logo of the Louisiana Susan G. Komen Affiliates, the secretary shall establish the special prestige plate in accordance with this Section. The contract shall include an agreement on the part of the Louisiana Susan G. Komen Affiliates to use the royalty fees as provided for in this Section.

F. The secretary shall promulgate rules and regulations as are necessary to implement the provisions of this Section.

§ 463.109. Special prestige license plates; In God We Trust

A. The secretary of the Department of Public Safety and Corrections shall establish a special prestige license plate, to be known as the In God We Trust plate, provided there is a minimum of one thousand applicants for such plate. The license plate shall be restricted to passenger cars, pickup trucks, vans, and recreational vehicles. The secretary shall design the plate, and it shall include the words "In God We Trust".

B. The prestige license plate shall be issued, upon application, to any citizen of Louisiana in the same manner as any other motor vehicle license plate.

C. The department shall collect an annual fee of twenty-five dollars for this special prestige license plate, which shall be disbursed in accordance with Subsection D of this Section. This fee shall be in addition to the regular motor vehicle license fee provided in R.S. 47:463, and a three dollar and fifty cent handling fee to be retained by the department to offset a portion of administrative costs.

D. The monies received from the additional twenty-five dollar fee shall be annually disbursed as follows:

(1) One-third shall be divided equally among and paid to each of the Boy Scouts of America area councils in Louisiana.

(2) One-third shall be divided equally among and paid to each of the Girl Scouts of the U.S.A. councils in Louisiana.

(3) One-third shall be paid to The Arc of Louisiana.

E. The secretary shall establish rules and regulations as are necessary to implement this Section.

§ 463.110. Special prestige license plate; 4-H

A. The secretary of the Department of Public Safety and Corrections shall establish a special prestige license plate, to be known as the 4-H plate, provided there is a minimum of one thousand applicants for such plate. The license plate shall be restricted to passenger cars, pickup trucks, vans, and recreational vehicles.

B. The background of the plate shall be white and there shall be a thin green border around the perimeter of the plate. The top of the plate shall bear the word "Louisiana" in red. The 4-H logo shall appear on the left side of the plate beneath the words "LSU AgCenter" written in green. The bottom of the plate shall bear the words "Support 4-H Youth Development" in green letters and the alpha numeric registration license code and numbers shall also be green.

C. The prestige license plate shall be issued, upon application, to any citizen of Louisiana in the same manner as any other motor vehicle license plate.

D. The department shall collect an annual fee of twenty-five dollars for this special prestige license plate, which shall be disbursed to the 4-H Foundation. This fee shall be in addition to the regular motor vehicle license fee provided in R.S. 47:463, and a three dollar and fifty cent handling fee to be retained by the department to offset a portion of administrative costs.

E. The department shall promulgate such rules and regulations as are necessary to implement the provisions of this Section.

No. 05-1222

FILED

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OFFICE OF THE CLERK
SUPREME COURT, U.S.

In The
Supreme Court of the United States

DOREEN KEELER and
PLANNED PARENTHOOD OF LOUISIANA, INC.,

Petitioners,

v.

RICHARD L. STALDER, Secretary,
Louisiana Department of Safety and Corrections;
and JOHN KENNEDY, State Treasurer,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

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QUESTION PRESENTED BY PETITIONERS

Did the court of appeals err in expanding the scope of the Tax Injunction Act to divest the federal courts of jurisdiction in a challenge to a viewpoint discriminatory forum for speech where that challenge was brought by plaintiffs who were not seeking to avoid paying the fee required to enter into the forum, but rather were contesting the state's refusal to allow them to pay the fee and enter into the forum to express their own views?

TABLE OF CONTENTS

	Page
QUESTION PRESENTED BY PETITIONERS	i
TABLE OF CONTENTS	ii
TABLE OF AUTHORITIES	iii
STATEMENT OF THE CASE	1
ARGUMENT: REASONS FOR NOT GRANTING THE WRIT PETITION	8
1. The state statutes herein enact a tax and not a mere regulatory fee	8
2. The state statutes in this case are revenue-raising statutes which meet the criteria of a tax	10
3. The Fifth Circuit's ruling in this case does not violate *Hibbs v. Winn*, 542 U.S. 88 (2004)	13
4. The Fifth Circuit's ruling in this case follows the plain wording of the Tax Injunction Act (28 U.S.C. §1341)	14
5. This case does not involve a forum for private speech but only the governmental speech of the state legislature and, therefore, of the state	15
6. A true "forum" case would not be defeated by the Tax Injunction Act	19
CONCLUSION	20

TABLE OF AUTHORITIES

Page

CASES

ACLU of Tenn. v. Bredesen, 441 F.3d 370 (6th Cir. 2006) 19

Audubon Ins. Co. v. Bernard, 434 So.2d 1072 (La. 1983) 8, 9, 12

Bob Jones University v. U.S., 461 U.S. 574 (1983) 5

Club Ass'n v. Wise, 156 F.Supp.2d 599 (S.D. W.Va. 2001) 12

Club Ass'n v. Wise, 293 F.3d 723 (4th Cir. 2002) 12

Diginet, Inc. v. Western Union ATS, Inc., 958 F.2d 1388 (7th Cir. 1992) 12

Henderson v. Stalder, 537 U.S. 1048 (2002) 1

Henderson v. Stalder, 57 Fed.Appx. 213, ___ F.3d ___, 2003 WL 151183 (5th Cir. 2003) 1

Henderson v. Stalder, 265 F.Supp.2d 699 (E.D. La. 2003) 8

Hibbs v. Winn, 542 U.S. 88 (2004) 13, 14

Home Builders Association of Mississippi, Inc. v. City of Madison, MS, 143 F.3d 1006 (5th Cir. 1998) 8, 9

Neinast v. Texas, 217 F.3d 275 (5th Cir. 2000) 10

Poelker v. Doe, 432 U.S. 519 (1977) 19

Schneider Transport, Inc. v. Cattanach, 657 F.2d 128 (7th Cir. 1981) 8

SCV v. Comm'r, Va. DMV, 288 F.3d 610 (4th Cir. 2002) 18

TABLE OF AUTHORITIES – Continued

Page

Valero Terrestrial Corporation v. Caffrey, 205 F.3d 130 (4th Cir. 2000) 12

Webster v. Reproductive Services, 492 U.S. 490 (1989) 19

FEDERAL STATUTES

28 U.S.C. §1341 ..... 7, 14

LOUISIANA CONSTITUTION

La. Const., art. 3, §16 ..... 4, 5

La. Const., art. 7, §9 4

La. Const., art. 7, §10 4

STATE STATUTES

La. R.S. 32:863.1 5

La. R.S. 36:407 6

La. R.S. 36:408 6

La. R.S. 47:303 10

La. R.S. 47:451-540 3

La. R.S. 47:463.2 6

La. R.S. 47:463.61 ..... 4, 5

La. R.S. 47:481 ..... 3, 9, 11

La. R.S. 47:505 5

STATEMENT OF THE CASE

This is the second time this case appears before this Honorable Court. The first petition for writ of certiorari by petitioners was denied by this Honorable Court on December 2, 2002, *sub nom. Henderson v. Stalder*, 537 U.S. 1048 (2002) (under this Honorable Court's docket No. 02-523). Before the writ petition was made, the U.S. Court of Appeals for the Fifth Circuit had denied a rehearing.

Ordinarily, such writ denial by this Honorable Court should have finally ended the matter. However, when the case came back to the Fifth Circuit from this Honorable Court, the Fifth Circuit, *sua sponte*, issued a new rehearing order. That order vacated the first order denying plaintiffs-appellees' petition for rehearing *en banc*. Then, the order recited that the petition for rehearing *en banc* was denied but added,

> "The case is remanded to the district court with instructions to dismiss the case for lack of standing unless the plaintiff Keller [*sic*] amends her petition within a reasonable time to challenge the state's overall policy and practice of issuing specialty license plates."

See Henderson v. Stalder, 57 Fed.Appx. 213, ___ F.3d ___, 2003 WL 151183 (5th Cir. 2003) (Table, No. 00-31171). The case was thus remanded to the district court, and plaintiff Keeler did amend to broaden her challenge to include other, but not all, special prestige license plates and their authorizing statutes. Planned Parenthood also purported to add new claims to the amended complaint, and the other plaintiffs continued their claims in the new complaint, even though they had been dismissed by the Fifth Circuit. In the most recent appeal, the Fifth Circuit

eventually dismissed these other claims by all plaintiffs who were not Keeler as exceeding the scope of the remand mandate.

It appears that petitioners in their writ petition have made a number of representations and omissions all of which, taken together, have the capacity to mislead. One of these omissions is that the district court had entertained and granted their motion for summary judgment. Hence, federal jurisdiction must not only be properly alleged in their complaint but also proven by them by admissible evidence at least in affidavit form and established beyond a genuine issue of fact. For example, petitioners failed to make any evidentiary showing whatsoever that the State of Louisiana ever created a forum for private speech by inviting private speakers to come upon state property to speak out. Rather, as a matter of fact and law, the state and its legislature reserves to itself the right to publish its own chosen themes on its license plates as governmental speech and does not allow, much less invite, private persons to establish their own themes on state license plates. It is this policy of the state to publish only its own messages as designated by law in statutes enacted by the legislature that Keeler attacks; she simply does not wish the state to publish its own expression of governmental speech, when she disagrees with the state's speech.

In the granting of the summary judgment, the district court should have considered only clearly undisputed facts. Instead, the district court resolved in Keeler's favor facts for which Keeler had no affidavits or evidence and many of which were put into dispute by affidavits submitted by defendants-appellants, affidavits of Kay Hodges and Rosemary Fritz, which petitioners also omitted mention of in the writ petition but which appear in respondents'

appendix (R.App. 7, 12). Indeed, some of the facts supported by affidavits submitted by defendants-appellants were actually uncontroverted by Keeler, but the district court ignored or rejected them anyway. Respondents complained of these district court rulings in their appeal to the Fifth Circuit, which did not reach the issue because it dismissed the petitioners' case on other grounds, but it is submitted, therefore, that petitioners' references to the district court findings of fact, without these caveats, in their writ petition (especially their statement of the case therein) are flawed and do a disservice to this Honorable Court as unqualified representations.

The district court actually enjoined more than one hundred state statutes within Chapter 4 of Title 47 of the Louisiana Revised Statutes of 1950, as amended. This Chapter is entitled and deals with the "Vehicle Registration License Tax" and comprises La. R.S. 47:451 through 540. Indeed, Title 47 is entitled "Revenue and Taxation."

> "Except as provided in R.S. 47:480, all fees and taxes provided for in this Chapter, including the permit fees, shall be paid to the state treasurer on or before the tenth day of each month following their collection and shall be credited to the account of the state general fund and the state highway fund No. 2, as provided by law."

La. R.S. 47:481. Moreover, the affidavit of Rosemary Fritz (R.App. 12) reveals facts which clearly show that the enjoined statutes are tax statutes of the state of Louisiana. They comprise a system of taxation created by the Legislature whereby varying assessments are made for the vehicle registration license tax; the assessment variation is created by some exemptions and by varying the amounts of "fees" that are required to paid into the state

treasury according to the particular license plate that is applicable.

Louisiana state constitutional provisions, which supersede anything said in mere statutes, require that all funds received by state officers and agencies be deposited into the State Treasury. La. Const., art. 7, §9 (R.App. 1). No funds may be expended from the State Treasury without a legislative appropriation therefor. La. Const., art. 7, §10(D) (R.App. 2) and art. 3, §16 (R.App. 1). Not only do petitioners omit in their writ petition these important fiscal restraints, but they also make representations which, if true, would be violative of them.

La. R.S. 47:463.61 provides for the State to obtain revenue from the issuance of these "Choose Life" license plates for the purpose of using its own resources to encourage pregnant women to choose life and adoption over abortion by financing crisis-pregnancy assistance in such forms as crisis-pregnancy counseling, obstetric and pediatric medical and health care, pregnancy care, new-born care and assistance, and adoption services, if finally desired by the pregnant woman.

The funds, once collected from the sale of the plates, are to be appropriated by the state legislature directly from the state treasury to organizations which actually provide such "material" – *i.e.*, "secular" – services; these service-providers must be organizations which have qualified for federal income tax exemption pursuant to Section 501(c)(3) of the Internal Revenue Code[1] and must, therefore, be eleemosynary in nature and act as a "charitable

[1] La. R.S. 47:463.61(F)(2).

trust," *Bob Jones University v. U.S.*, 461 U.S. 574, 591, 585-592 (1983), to provide these material services ultimately for the public benefit. No one but the Louisiana Legislature, in its act appropriating the funds for expenditure from the state treasury, makes the final determination as to which, if any, of these service-providing organizations will receive what amounts of funds for the specific purposes quoted above as explicitly spelled out in the statute.[2] La. R.S. 47:463.61(G) provides authorization to require annual audits to ensure that these funds are being properly spent for these (secular) purposes.

With one exception not involved in this case, the overall policy and practice of the state of Louisiana is that official state license plates – whether designated special prestige license plates or otherwise – are the property of the state of Louisiana[3] on which nothing is published except by the state of Louisiana, through its legislative branch and appropriate executive officers.[4] The record is

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[2] "Monies in the fund shall only be withdrawn pursuant to an appropriation by the legislature solely for the purposes provided by this Section," La. R.S. 47:463.61(F)(1). *Cf.* La. Const. (1974) art. 3, §16. ("Except as otherwise provided by this constitution, *no money shall be withdrawn from the state treasury except through specific appropriation*, and no appropriation shall be made under the heading of *contingencies* or for longer than one year," La. Const. (1974) art. 3, §16(A); "The general appropriation bill shall be *itemized* and shall contain only appropriations for the ordinary operating expenses of government, *public charities*, pensions, and the public debt or interest thereon," La. Const. (1974) art. 3, §16(C); "All other bills for appropriating money shall be for a *specific purpose and amount*," La. Const. (1974) art. 3, §16(D). (Emphases added.))

[3] *See*, for example, La. R.S. 47:505(B) and La. R.S. 32:863.1(C)(1)(a) and (b).

[4] *See* the affidavit of Kay Hodges, dated June 10, 2003 (R.App. 8-9).

entirely devoid of any evidence whatsoever that the state of Louisiana *invites* private persons to make the final determination in designating what will be published on its license plates.[5]

Even when the Legislature, by statute, authorizes a private organization's logo or motto to appear on a specialty plate, it is not the private organization which is making the final determination of designating that its logo or motto appear on the plate. Rather, it is the Legislature which is making the final authorization designating that same may appear on the license plate, and it is the secretary of the Louisiana Department of Public Safety and Corrections ("LDPSC") (actually the assistant secretary of LDPSC for the office of motor vehicles, under La. R.S. 36:407 and 408, especially 408(C)) who actually establishes the license plate and makes the final determination of what shall be and what shall not be published on the plate, including the private organization's logo or motto. The Legislature's directive is to the Secretary of LDPSC and his assistant.

The statutory enactments of the Louisiana Legislature and the language, words, and phrases in them are the speech of the Louisiana Legislature and, therefore, of the state. No matter who came up with some ideas for legislative proposals, any legislative bill must be authored by a legislator in order to be a bill, an official legislative proposal. Mere private ideas, *as such*, cannot be enacted by the Legislature. And it is the Legislature and no one else who may enact state statutes. When enacted, the legislative

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[5] The one exception to this policy is contained in La. R.S. 47:463.2 (the so-called "vanity plate"), which is not involved at all in this case.

bills become Acts of and by the Legislature. The enactments and the language, words, and phrases within them become and remain the language, words, and phrases of the Louisiana Legislature and, therefore, of the state government. To hold, as the district court did, that statutory enactments (and the words and phrases which comprise them) are private, and not the speech of the Legislature and, therefore, of the state, is both absurd and preposterous. And it is only by the statutory enactments of the state of Louisiana that the core message and "speech" of every official specialty license plate in Louisiana is mandated to be published on such license plate.

Respondents appealed the district court's granting of the summary judgment to the Fifth Circuit and raised a multitude of contentions. Because the district court, as its remedy, actually enjoined revenue-raising statutes of the state, the Fifth Circuit finally ruled that the Tax Injunction Act ("TIA") (28 U.S.C. §1341) barred the district court's judgment. Implicit in its ruling is recognition that the district court could not, alternatively, force the state legislature to enact a statute that it did not wish to enact and to say in government speech that which the state legislature did not wish to say. Even the district court recognized that such a remedy violated state sovereignty and refused to order such a remedy. Petitioners, moreover, had primarily demanded, in the first instance, that the enforcement of the statutes be enjoined.

ARGUMENT: REASONS FOR NOT GRANTING THE PETITION

1. The state statutes herein enact a tax and not a mere regulatory fee.

The district court explicitly found that the purpose of these statutes was to raise revenue. *Henderson v. Stalder*, 265 F.Supp.2d 699, 716 (E.D. La. 2003). The district court also explicitly admitted that it was enjoining statutes granting tax exemptions, although it attempted to justify it by saying it was protecting the First Amendment challenge of Keeler. The district court, however, gave too much significance to the mere nomenclature of "fees" used in the statutes.

The use of the "fee" nomenclature does not have any bearing on the matter. Under both state and federal jurisprudence, they are tax statutes. It makes no difference that word *fee* is used in them; it is the reality of what they are and what they are used for that control. "The label affixed to an ordinance by its drafters has no bearing on the resolution of the question," *Home Builders Association of Mississippi, Inc. v. City of Madison, MS*, 143 F.3d 1006, 1010 n.10 (5th Cir. 1998). *See* also *Audubon Ins. Co. v. Bernard*, 434 So.2d 1072 (La. 1983). In *Schneider Transport, Inc. v. Cattanach*, 657 F.2d 128 (7th Cir. 1981), the Court held that the Wisconsin Vehicle Registration license "fee" was in fact a tax. The fact that the tax goes to a special highway fund to finance one special purpose does not prevent it from being a tax.

Here, the Louisiana Legislature has imposed the tax under "fee" nomenclature on virtually every motor vehicle owner who resides in the state and uses the state's roads, highways, bridges, streets, and ways.

> "Except as provided in R.S. 47:480, all fees and taxes provided for in this Chapter, including the permit fees, shall be paid to the state treasurer on or before the tenth day of each month following their collection and shall be credited to the account of the state general fund and the state highway fund No. 2, as provided by law."

La. R.S. 47:481. Moreover, the affidavit of Rosemary Fritz (R.App. 12) reveals facts which clearly show that the enjoined statutes are tax statutes of the state of Louisiana. Only the $3.50 administrative fee might be a regulatory fee. All other "fees" are taxes, even if some of the money is appropriated by the Legislature to private organizations which perform services that support the peace, tranquility, welfare, and benefit of the community and society as a whole, as in the U.S. President's "faith-based initiative."

The attempt to rely on state constitutional requirements for the passage of a tax is misplaced; *Audubon Ins. Co. v. Bernard*, *supra*, clearly shows that the Louisiana Legislature does not always obey those provisions when enacting a tax. No plaintiff has challenged these statutes on the grounds that state constitutional provisions were violated; even if they were, the Louisiana Legislature can easily cure the defect by reenacting them in a fiscal or special session.

No one in this case refutes that Louisiana has a "plain, speedy, and efficient remedy." *See Home Builders Association of Mississippi*, *supra*, at 1012.

Ultimately, the district court took the regulatory "fee" exception to the Tax Injunction Act and expanded it almost to swallow up the general rule against interference with tax schemes. But the rule of statutory interpretation is the

opposite. The Tax Injunction Act is to be construed *broadly* to prevent precisely such disruption of the state's tax scheme (including varying measures of assessment); accordingly, the regulatory "fee" exception is to be construed narrowly to give effect to the Tax Injunction Act. It must be limited to true regulatory fees imposed by an agency to defray the costs of agency regulation itself (not other more general or specific purposes, as is the case here). For example, the regulatory fee exception in the case of *Neinast v. Texas*, 217 F.3d 275 (5th Cir. 2000) should be limited to situations where the statute itself, unlike the enjoined statutes in this case, *explicitly* provides that the monies raised are to defray the costs of the regulatory program itself.

2. The state statutes in this case are revenue-raising statutes which meet the criteria of a tax.

The special fees are taxes imposed by the Legislature on all vehicle owners whose vehicles drive the state's highways, streets, and ways. And they are collected by a regular tax collection agent of the state with respect to registration of motor vehicles. *See*, for example, La. R.S. 47:303(B)(1), which makes the Motor Vehicle Commissioner (the assistant secretary of public safety, motor vehicles) the express statutory agent of the Secretary of the Department of Revenue and Taxation (who is also the "Collector of Revenue") for the collection of sales and use and other taxes connected with the registration of motor vehicles.

The regulatory scheme in this case is of identification of ownership of vehicles driven on the state's highways, streets, and ways; that regulatory scheme is accomplished

through the license plate registration program, wherein the owners of such vehicles must register their vehicles, obtain for each of their vehicles a unique license plate for identification purposes, and pay a fee and taxes in connection therewith. Only the $3.50 administration cost (fee) goes to defray the costs of that regulation and is retained by the Department of Public Safety & Corrections (DPSC) for that purpose. All other "fees" are taxes paid into the state treasury, appropriated by the Legislature, and used for some unrelated purpose for the benefit of the larger society. *See* the *uncontroverted* affidavits of Kay Hodges (R.App. 7) and Rosemary Fritz (R.App. 12) and also La. R.S. 47:481.

The ultimate purpose of these statutes establishing these special prestige license plates is, first, of course, to accomplish the registration license program to identify vehicles driving the state highways, streets, and ways, and to collect an administrative cost of $3.50 (the regulatory fee) and a vehicle registration license tax in connection therewith, but also, second, to give legislative and public recognition to organizations, institutions, causes, and ideas, etc., which benefit the overall society by their existence and their work and to raise state revenue and special funds to support such organizations, institutions, causes, and ideas, etc., so that their work for the ultimate benefit of the overall society might continue. Thus, this purpose is similar to legislative resolutions which are enacted at each session giving public recognition and commendation to certain organizations, institutions, causes, and ideas, etc., and providing that a copy of the resolution be sent to such organizations and institutions for them to display in an appropriate space on their private property. The speech in such resolutions is

quintessential state speech. It has no value except as state speech; if an organization, for example, recognizes and commends itself, such recognition and commendation has little value. But if the recognition and commendation comes from the Legislature and the state, it has great value.

None of these special fees is a "user fee." "If the fee is a reasonable estimate of the cost imposed (on the governmental entity) by the person required to pay the fee, then it is a user fee," *Diginet, Inc. v. Western Union ATS, Inc.*, 958 F.2d 1388, 1399 (7th Cir. 1992). "If it is calculated not just to recover a cost imposed on the [governmental entity] or its residents but to generate revenues that the [governmental entity] can use to offset unrelated costs or confer unrelated benefits, it is a tax, whatever its nominal designation," *id.* Accord: *Audubon Ins. Co. v. Bernard*, 434 So.2d 1072 (La. 1983).

The mere fact that the special fee money goes to a special fund for a specific purpose does not prevent it from having the ultimate purpose of indirectly benefiting the public society at large or from being, therefore, a "tax." *Valero Terrestrial Corporation v. Caffrey*, 205 F.3d 130 (4th Cir. 2000); *Club Ass'n v. Wise*, 293 F.3d 723 (4th Cir. 2002) (adopting as its own the district court opinion at 156 F.Supp.2d 599 (S.D. W.Va. 2001)). Thus, such "fees" are taxes. They are certainly not regulatory fees. The state does not *regulate* in these statutes, for example, the Knights of Columbus or the providers of services to women with crisis pregnancies. The special fees go to a special fund within the state treasury dedicated to these special statutory purposes, and the Legislature must appropriate them to these purposes. These special purposes are ultimately – though

indirectly, through the existence and work of these service organizations, institutions, causes, ideas, etc. – intended for the eventual betterment and benefit of the whole society. The only regulatory fee is the $3.50, which the DPSC keeps to defray the costs of producing the license plates, the paper work with the license plates, and the handling and mailing. The special fees, on the other hand, are paid over to the state treasury, along with the basic license fee, and are taxes within the meaning of the TIA.

The alleged voluntariness of paying the special exactions in return for obtaining the special license plate does not prevent the exactions from being taxes. All motor vehicle registration license taxes, including the exactions paid for the basic regular state license plate, depend entirely on the voluntariness of the owner of the vehicle. He does not have to own a motor vehicle. He could rely on public transportation. If he does not purchase a motor vehicle, he will not pay any motor vehicle registration license taxes. The same is true for sales taxes. A prospective purchaser can freely choose not to make the purchase of goods or services; if he chooses not to purchase, he pays no sales taxes. If he chooses to make the purchase, he will pay the sales taxes on the items purchased. It would be entirely incorrect for someone to say that because the purchase is voluntarily made, the sales tax is not really a tax.

3. The Fifth Circuit's ruling in this case does not violate *Hibbs v. Winn*, 542 U.S. 88 (2004).

In *Hibbs v. Winn*, 542 U.S. 88 (2004), the only state provision challenged was one allowing tax credits for contributions made for the benefit of private and religious

elementary and secondary schools. It is imperative to note that, unlike this case, there was no actual enjoining in *Hibbs v. Winn* of a tax or revenue-raising statutory provision in the lower courts. In this case, the district court had actually enjoined state revenue-raising statutes, in violation of the plain mandate given to the lower federal courts by Congress in the Tax Injunction Act.

4. The Fifth Circuit's ruling in this case follows the plain wording of the Tax Injunction Act (28 U.S.C. §1341).

It must be remembered that the district court actually enjoined state revenue-raising statutes. The Tax Injunction Act says plainly,

> "The district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State."

The district court in this case enjoined the collection of the motor vehicle registration license taxes enacted in the special prestige license plate statutes of the State of Louisiana. Such an injunction violates the plain wording of the statute. The statute, in this respect, is clear and unambiguous, and there is no need to make inquiries into legislative history in an attempt to make the statute say what it does not say. For example, there is no condition mentioned whatsoever in the statute that the plaintiff must be taxpayer. Who the plaintiff is and what the case is about is irrelevant to the plain wording of the statute; the lower federal courts have been prohibited by Congress from enjoining the collection of a state tax, where a plain

and speedy remedy is available in the state courts. Petitioners can always bring their claims in state court and litigate all the way up to this Honorable Court. The State of Louisiana offers the full panoply of actions and remedies to its litigants.

5. This case does not involve a forum for private speech but only the governmental speech of the state legislature and, therefore, of the state.

As explained hereinabove, the ultimate purpose of these special prestige license plates is for the State of Louisiana to give public recognition and commendation to certain organizations, institutions, causes, and ideas, etc., whose existence and work has had a beneficial effect on the society as a whole and to raise revenue to support the continued existence and work of these organizations, institutions, causes, and ideas, etc., for the ultimate benefit of the whole society. In this sense, these special prestige license plates are like some of the legislative resolutions which are adopted at each legislative session and which give public recognition and commendation to certain organizations, institutions, causes, and ideas, etc. Some of these legislative resolutions from the 2003 Regular Session, for example, include HCR 5 recognizing and commending the Public Administration Institute Student Association at LSU, HCR 33 recognizing the societal significance of the Ponchatoula Strawberry Festival, HCR 118 giving public recognition and commendation to the Louisiana Workforce Commission, HCR 129 recognizing and commending foster parents, HCR 134 recognizing and commending the First Baptist Church of Bossier City for 100 years of service and contribution both to its membership and to the entire Bossier City community, HCR 151

recognizing and commending the Parents Resource Institute for Drug Education, SCR 40 giving public recognition and commendation to McIlhenny Company and Paul McIlhenny for their supportive actions to promote America's Wetland Campaign to Save Coastal Louisiana, and SCR 69 giving public recognition and commendation to WAFB-TV for its 50 years of broadcasting service and other contributions to the Baton Rouge community. These legislative resolutions comprise only a small sampling of such resolutions adopted by the Louisiana Legislature; all of them are available on the official website of the Louisiana Legislature ("http://www.legis.state.la.us/") where the state legislature has officially published them (and this Honorable Court may take judicial notice of them).

As explained above, such resolutions are quintessential state speech and only have value as state speech. They are the speech of the Legislature, which adopted them as their own resolutions, and, therefore, of the state. The same is true for the messages on these special prestige license plates. For example, the Legislature could enact a statute authorizing a special prestige license plate giving public recognition to the Public Administration Institute Student Association at LSU (*cf.* HCR 5 above) or recognizing the Ponchatoula Strawberry Festival (*cf.* HCR 33 above). And in the same way, the public recognition has value only because the special prestige license plate is the speech of the Legislature and, therefore, of the state.

Even though a suitable copy of the legislative resolution is sent to the chief executive officer or chief protagonist of the organization, institution, cause, or idea, etc., for it to be displayed on the private property thereof, it remains, of course, the speech of the Louisiana Legislature

and, therefore, of the state. The same is true for the special prestige license plates. Even though they are placed on privately owned vehicles, the messages on the license plates themselves remain the speech of the Legislature (and sometimes of the state's executive officer, Kay Hodges, who exercises final editorial control over what is finally published on such plates) and, therefore, of the state.

Indeed, the district court's view that the contention of state speech is defeated when final editorial control rests with a state executive officer instead of the state Legislature is illogical. With final editorial control vested in a state executive officer, the publication on the special prestige license plates is assuredly state speech. The record is barren of any evidence showing that there is a "group effort" (private persons and the state executive officer) in the exercise of final editorial control or that anyone other than the state executive officer exercises it, and the affidavit of Kay Hodges (R.App. 9) stating that only she, and no one else, has final editorial control cannot, especially on a summary judgment motion urged by the opposing party, be sophistically construed to say so, when it does not.

Keeler attempts to distinguish military posters and Environmental Protection Agency books, papers, and posters published and sold by the Government Printing Office (GPO) by arguing that a private purchaser of those items can add his own private speech thereto, while he cannot do so to these special prestige license plates. This argument does not help Keeler or support her contention. If a private vehicle owner cannot change the message on the special prestige license plate that he has obtained, it

means ever more strongly that such message on the special prestige license plate is that of the state and not the private vehicle owner, who, of course, could change his own private message any way he desires.

Keeler and the district court rely on the four-part test used by the three-judge panel in *SCV v. Comm'r, Va. DMV*, 288 F.3d 610 (4th Cir. 2002) to determine who was the speaker of the expressions found on Virginia's special license plates. The Fourth Circuit had to admit that the U.S. Supreme Court has never approved that four-part test nor does every circuit court of appeals. *Id.*, 288 F.3d at 618. It also admitted that there is controversy surrounding the scope of the governmental speech doctrine, *id.*, especially by jurists who disagree with the U.S. Supreme Court's establishment of it. Nevertheless, it was the duty of the circuit court of appeals not to undermine the governmental speech doctrine but rather to follow U.S. Supreme Court precedent. Certainly, the four-part test should not be employed or twisted in such a way to circumvent or undermine the governmental speech doctrine, as the instant petitioners now ask this Court to do.

Correctly analyzed, both the central and ultimate purpose of these statutes establishing these special prestige license plates is, first, of course, to accomplish the registration license program to identify vehicles driving the state highways, streets, and ways, and to collect an administrative cost of $3.50 (the regulatory fee) and a vehicle registration license tax in connection therewith, but also, second, to give legislative and public recognition to organizations, institutions, causes, and ideas, etc., which benefit the overall society by their existence and their work and to raise state revenue and special funds to

support such organizations, institutions, causes, and ideas, etc., so that their work for the ultimate benefit of the overall society might continue. Only state officials exercise final editorial control over the content of what is published or not published on special prestige license plates. The literal speaker is the Louisiana Legislature enacting the statutes creating the mandate and core message and the state's executive officer (Kay Hodges) in finalizing the design and publication of the message on the license plates. Any conclusion that the statutes enacted by the Louisiana Legislature and the words, phrases, and language therein – including the core messages to be published on the license plates – is not the speech of the Legislature and, therefore, of the state is erroneous. The Louisiana Legislature bears the ultimate responsibility for the speech, and its members bear that responsibility at the ballot box, as explained by the U.S. Supreme Court in *Webster v. Reproductive Services*, 492 U.S. 490, 511 (1989) (discussing *Poelker v. Doe*, 432 U.S. 519 (1977)).

See also generally *ACLU of Tenn. v. Bredesen*, 441 F.3d 370, Part III, 375-380 (6th Cir. 2006).

6. A true "forum" case would not be defeated by the Tax Injunction Act.

A true "forum" case would not be defeated by the Tax Injunction Act, as feared by petitioners and the dissenters from a denial of a motion for rehearing *en banc* in the Fifth Circuit. Litigants will not be able to disguise a true "free speech" case as a tax injunction case, for the precedent of this Honorable Court in true "forum" cases is that

speech is not to be smothered and enjoined but that more speech is to be added, where needed, to cure the "free speech" violation. Thus, where the state truly creates a forum for private speech, even it involves the exaction of a fee to enter the forum, the statute or other device creating the forum will not be enjoined; other private speakers, besides those private speakers who have entered the forum, will be allowed to enter the forum also on the same terms.

This case did not involve a forum for private speakers. This case only involved governmental speech, with the state legislature enacting statutes to make the expression. The district court, albeit confused, did implicitly recognize that it could not order the state legislature to enact state laws that the state legislature did not wish to enact or to say in those laws that which the state legislature did not wish to say. Hence, the district court enjoined the statutes containing state speech and, coincidentally but importantly, enjoined the collection of the taxes contained in those statutes.

CONCLUSION

The question presented is predicated upon and conditioned upon there having been created a forum for private speech by the mere enactment of laws by the state legislature. But such is not the case. This litigation involves only governmental speech. This case, especially as erroneously presented in the writ petition, is not a good case for attempting to set a precedent. Indeed, there are in the other circuits different cases which better-by-far lend

themselves to precedent, should this Honorable Court decide to set one.

Moreover, the district court's final judgment had actually enjoined the collection of state taxes. Therefore, it was correct and appropriate for the Fifth Circuit to hold that such a judgment exceeded the scope of federal jurisdiction, as it violated the plain and unambiguous words of the Tax Injunction Act.

For the foregoing reasons, the petition for a writ of certiorari in this case should be denied.

Respectfully submitted,

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Counselors for Respondents

Louisiana Constitution, Article 3, Section 16

(A) Specific Appropriation for One Year. Except as otherwise provided by this constitution, no money shall be withdrawn from the state treasury except through specific appropriation, and no appropriation shall be made under the heading of contingencies or for longer than one year.

(B) Origin in House of Representatives. All bills for raising revenue or appropriating money shall originate in the House of Representatives, but the Senate may propose or concur in amendments, as in other bills.

(C) General Appropriation Bill; Limitations. The general appropriation bill shall be itemized and shall contain only appropriations for the ordinary operating expenses of government, public charities, pensions, and the public debt or interest thereon.

(D) Specific Purpose and Amount. All other bills for appropriating money shall be for a specific purpose and amount.

(E) Extraordinary Session. Except for expenses of the legislature, a bill appropriating money in an extraordinary session convened after final adjournment of the regular session in the last year of the term of office of a governor shall require the favorable vote of three-fourths of the elected members of each house.

Louisiana Constitution, Article 7, Section 9, Subsection A

Section 9. (A) Deposit in State Treasury. All money received by the state or by any state board, agency, or

commission shall be deposited immediately upon receipt in the state treasury, except that received:

(1) as a result of grants or donations or other forms of assistance when the terms and conditions thereof or of agreements pertaining thereto require otherwise;

(2) by trade or professional associations;

(3) by the employment security administration fund or its successor;

(4) by retirement system funds;

(5) by state agencies operating under authority of this constitution preponderantly from fees and charges for the shipment of goods in international maritime trade and commerce; and

(6) by a state board, agency, or commission, but pledged by it in connection with the issuance of revenue bonds as provided in Paragraph (C) of Section 6 of this Article, other than any surplus as may be defined in the law authorizing such revenue bonds.

Louisiana Constitution, Article 7, Section 10, Subsection D(1)

Appropriations. (1) Except as otherwise provided by this constitution, money shall be drawn from the state treasury only pursuant to an appropriation made in accordance with law. Appropriations from the state general fund and dedicated funds except funds allocated by Article VII, Section 4, Paragraphs (D) and (E) shall not exceed the expenditure limit for the fiscal year.

Louisiana Revised Statutes 32:863.1(C)(1)(a) and (b)

C. (1)(a) If the operator of a motor vehicle is unable to show compliance with the provisions of this Part by displaying the required document when requested to do so, the motor vehicle shall be impounded and the operator shall be issued a notice of noncompliance with the provisions of this Part on a form to be provided by the department. Notwithstanding the provisions of R.S. 32:852(E), such notice may be sent by first class mail. A copy of the notice of noncompliance shall be provided to the towing or storage company and a copy shall be forwarded to the office of motor vehicles within three calendar days after the notice of noncompliance was served. The notice of noncompliance shall serve as notice of administrative hearings rights. In addition, the law enforcement officer shall remove the license plate from the vehicle if the vehicle is registered in Louisiana. The law enforcement officer shall deliver the vehicle license plate to the chief of the agency which employs the officer, or to a person in that agency designated to receive such license plates. In those cases in which a motor vehicle is not impounded, a copy of the notice of noncompliance shall be attached to the vehicle license plate and both shall be delivered to the nearest office of motor vehicles within three calendar days after the notice of noncompliance was served.

(b) The owner of the vehicle shall have three calendar days, excluding Saturdays, Sundays and legal holidays, from the date that the notice of noncompliance was issued to present to the office of motor vehicles proof of insurance coverage or security in effect at the time of the issuance of the notice of noncompliance. If the vehicle was properly insured at the time the notice was issued, any valid license plate shall be returned within forty-eight hours, exclusive

of legal holidays, to the owner of the vehicle at no cost to the owner. However, if the owner fails to provide proof of the fact that the vehicle was properly insured at the time the notice of noncompliance was issued, the chief administrative officer of the office of motor vehicles shall destroy, or shall cause to be destroyed, the license plate removed from that owner's vehicle and shall notify the secretary that the owner of the vehicle is not in compliance with the compulsory liability law. Upon receipt of such notification, the secretary shall revoke the registration of such vehicle.

Louisiana Revised Statutes 47:303(B)(1)

(1) The tax levied by R.S. 47:302A on any such vehicle shall be paid to the vehicle commissioner as the agent of the collector of revenue at the time of application for a certificate of title or vehicle registration license and such tax shall be administered and collected by the vehicle commissioner in compliance with rules and regulations issued by the collector of revenue and in compliance with the law as construed by the collector of revenue. No certificate of title or vehicle registration license shall be issued until this tax has been paid. The collector of revenue shall be the only proper party to defend or to institute any legal action involving the tax imposed by R.S. 47:302A on the sale or use of any motor vehicle, automobile, motorcycle, truck, truck-tractor, trailer, semi-trailer, motor bus, house trailer or any other vehicle subject to the vehicle registration license tax. (R.S. 47:451 et seq.).

Louisiana Revised Statutes 47:481

Except as provided in R.S. 47:480, all fees and taxes provided for in this Chapter, including the permit fees, shall be paid to the state treasurer on or before the tenth day of each month following their collection and shall be credited to the account of the state general fund and the state highway fund No. 2, as provided by law.

Louisiana Revised Statutes 47:505(B)

B. (1) The commissioner shall require the removal of all number plates upon termination of the lawful use thereof by the owner. However, the commissioner may transfer a number plate, as long as the plate remains legible, when a licensee replaces a motor vehicle. At the time the vehicle is replaced, the licensee shall remove the number plate and present it to any office of motor vehicles field office with the appropriate paperwork indicating replacement of the vehicle. The office of motor vehicles shall transfer the plate to the replacement vehicle, and the transfer shall be completed at the time the licensee presents the number plate and the appropriate paperwork. The secretary shall promulgate rules and regulations as are necessary to implement the provisions of this Paragraph, including but not limited to requirements for paperwork indicating replacement of the vehicle and procedure for transfer of number plates.

(2) Any dealer of motor vehicles who receives a previously owned vehicle with the intention of reselling such vehicle shall remove the license or number plate from such vehicle before resale. After the dealer so removes the plate, he shall execute an affidavit attesting to that fact and attach said affidavit to the title and registration. He shall

notify the secretary on a monthly report listing all plates so removed and destroyed. The Department of Public Safety and Corrections, upon receipt of a transfer on such vehicle accompanied by the required affidavit, shall issue a new plate to the new owner in the same manner as if the vehicle had no plate issued to it. The knowing submission of a false affidavit shall be false swearing under R.S. 14:125.

STATE OF LOUISIANA

PARISH OF EAST BATON ROUGE

AFFIDAVIT OF KAY HODGES,
ASSISTANT SECRETARY,
LOUISIANA DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS, OFFICE OF MOTOR VEHICLES

BEFORE ME, the undersigned notary public, personally came and appeared

KAY HODGES

(sometimes hereinafter referred to as "AFFIANT") who, after being duly sworn, did depose and say:

AFFIANT currently serves as the Assistant Secretary of the Louisiana Department of Public Safety and Corrections, Office of Motor Vehicles.

In her official capacity as Assistant Secretary for the Office of Motor Vehicles, AFFIANT, as delegated to her by the Louisiana Legislature through statutory enactment, including R.S. 36:407 and 36:408 and other laws, possesses the powers and duties to collect from owners of motor vehicles registered in Louisiana the motor vehicle registration tax levied by the Legislature and to establish all official Louisiana motor vehicle registration license plates and to issue them to such owners upon payment of the tax. To the extent a motor vehicle registration license plate statute gives some power or duty to the Secretary of the department, that power or duty is actually exercised by AFFIANT on behalf of the Secretary and the department.

In Louisiana, the Legislature has chosen to determine what is published on official Louisiana motor vehicle

registration license plates and what is not and has delegated only to AFFIANT the authority to establish these license plates and to adopt rule and regulations as to what they may contain. In only R.S. 47:463.2, has the Legislature invited private persons to apply for a motor vehicle registration license plate with numbers and letters of the choice of the owner of the motor vehicle. Even then, the application is subject to rules and regulations promulgated by AFFIANT, which rules and regulations incorporate the criteria supplied by the Legislature in the statute, and also subject to the final approval or disapproval of AFFIANT. It is AFFIANT's understanding that this particular kind of motor vehicle license plate, as provided by R.S. 47:463.2, is not at all involved in *Henderson v. Stalder,* Civil Action No. 00-2237 on the docket of the United States District Court for the Eastern District of Louisiana.

With respect to all other motor vehicle registration license plates, the Louisiana Legislature has retained the determination of what kind of basic, standard license plate and what kind of other non-standard license plate shall be and what maybe published on them. Sometimes the details of what may be contained on the license plate is delegated by the Louisiana Legislature to AFFIANT, who possesses the power to make rules and regulations regarding them, but the Louisiana Legislature always reserves to itself the determination of what those license plates shall be. In no case are private owners of motor vehicles invited to determine what new special motor vehicle license plates or themes thereof there shall be. In this manner, the choice of the special motor vehicle registration license plate is that of the Legislature, and the core message of any such license plate is the state governmental speech and expression of the Legislature.

Even when AFFIANT receives suggestions as to a logo or motto from an organization or entity whom the Legislature wishes to give public recognition by authorizing a special prestige motor vehicle registration license plate for it but does not designate in the statutory law what the logo or motto will be on the license plate, it is only AFFIANT who, under the law, has the final decision and determination whether that suggested logo or motto will be published or not be published on the license plate. In this manner, AFFIANT has the power and duty under law to exercise for the state and for the Legislature the editorial function of what shall be published and not published on the license plate, the editorial function that itself is expressive activity and causes the final license plate always to be state governmental speech.

After AFFIANT collects the motor vehicle registration tax, and after compliance Article VII, Section 9(B) of the Constitution of Louisiana relative to the Bond Redemption Fund, the AFFIANT turns the funds over to the state treasury from whom it is eventually deposited to appropriate fund in the state treasury. After AFFIANT turns the tax money over to the state treasury, AFFIANT no longer has any control whatsoever over it.

Contrary to the assertions made by the plaintiffs in *Henderson v. Stalder,* Civil Action No. 00-2237 on the docket of the United States District Court for the Eastern District of Louisiana, neither the AFFIANT nor the Secretary, Richard Stalder, administers the entirety of R.S. 47:463.61 but only discrete parts of it. Neither the AFFIANT nor the Secretary, Richard Stalder, has any power whatsoever over the Choose Life Advisory Council, which is a creature of the Legislature and not executively organized within the Louisiana Department of Public

Safety and Corrections. Neither the AFFIANT, nor the Secretary, Richard Stalder, supervises or controls this advisory council and has no power under state law to disband it. Neither the AFFIANT, nor the Secretary, Richard Stalder, have the power under state law to prevent the Choose Life Advisory Council from meeting or performing its functions under the statute. Because the existence and composition of this advisory council is written into the statute as law, only the Louisiana Legislature has the power to abolish or disband it.

With respect to the special "Choose Life" account funds collected by the Office of Motor Vehicles under R.S. 47:463.61 for the "Choose Life Plate," neither the AFFIANT nor the Secretary, Richard Stalder, have any power or duties with respect to the disbursement of such funds. Upon the issuance of a "Choose Life Plate," the Office of Motor Vehicle collects funds which are broken down into the following categories: (1) the administrative fees for the license plate, (2) the motor vehicle registration tax, and (3) the special "Choose Life" funds. The administrative fees are retained by the Office of Motor Vehicles to reimburse the State for the additional cost incurred in the production and issuance of the "Choose Life Plate," the vehicle registration license tax is deposited in the Transportation Trust Fund or the State Highway Fund No. 2, depending upon the type of vehicle registered, and the "Choose Life" funds are deposited in the Choose Life Fund which is a special fund created in the state treasury. Neither the AFFIANT, nor the Secretary, Richard Stalder, have control or power over this third category of funds, once the funds are turned over to the state treasury, and neither the AFFIANT, nor the Secretary, Richard Stalder, have any control or power

to enforce or implement the last sentence of R.S. 47:463.61(F)(2).

It is AFFIANT"s understanding, based on her attorney's advice, that the Choose Life Advisory Council is to formulate merely an advisory recommendation as to the disbursement of the funds to recipients, that the Louisiana Legislature will take such advisory recommendation into consideration, but that it is only the Louisiana Legislature which has the discretion to make a final decision, in the act of appropriations applicable to such funds, as to the precise disposition of the funds and how they are to be disbursed. Neither the AFFIANT, nor the Secretary, Richard Stalder, have any power or duty under state law to enforce or implement any part of R.S. 47:463.61(F)(2)

/s/ Kay Hodges
KAY HODGES

SWORN TO and SUBSCRIBED, this 10th day of June, 2003.

/s/ Michael C. Barron
Notary Public

STATE OF LOUISIANA

PARISH OF EAST BATON ROUGE

AFFIDAVIT OF ROSEMARY FRITZ,
DEPUTY ASSISTANT SECRETARY, LOUISIANA
DEPARTMENT OF PUBLIC SAFETY AND
CORRECTIONS, OFFICE OF MOTOR VEHICLES

BEFORE ME, the undersigned notary public,
personally came and appeared

ROSEMARY FRITZ

(sometimes hereinafter referred to as "AFFIANT") who, after being duly sworn, did depose and say:

AFFIANT currently serves as the Deputy Assistant Secretary of the Louisiana Department of Public Safety and Corrections, Office of Motor Vehicles, and acts in the absence of the Assistant Secretary, Kay Hodges, who is currently out of town.

The Assistant Secretary for the Office of Motor Vehicles, as delegated to her by the Louisiana Legislature through statutory enactment, including R.S. 36:407 and 36:408 and other laws, possesses the powers and duties to collect from owners of motor vehicles registered in Louisiana the motor vehicle registration license tax and other fees levied by the Legislature and to establish all official Louisiana motor vehicle registration license plates and to issue them to such owners upon payment of the tax and any other special fees. As a result of complying with the injunction issued by this court enjoining the enforcement of special license plates, the collection of the vehicle registration license tax and the special fees are changed as indicated below:

1. Those special license plate statutes that exempt the owner from paying the regular registration license tax, or any other fee, are now enjoined by the federal court, and as a result of the injunction, require these individuals, formerly exempt from payment of the tax, to obtain a regular license plate and pay the vehicle registration license tax. Such persons include the following:

a. Ex-Prisoner of War, R.S. 47:463.7

b. Disabled Veteran, R.S. 47:463.12

c. Congressional Medal of Honor Winner, R.S. 47:463.13

d. Purple Heart, R.S. 47:463.26

2. Those plates with special fees in addition to the regular registration license tax are now enjoined by the federal court. These special fees are deposited in the general fund, and are not used in connection with the administration laws governing vehicle registrations and license plates. The general fund has lost these fees because of the injunction, such as the following:

a. Ham Operator Plate, R.S. 47:463.3, one time fee of $25.00 at initial issuance.

b. Shiner Vehicle, R.S. 47:463.9, one time fee of $25.00 at initial issuance.

c. Louisiana National Guard, R.S. 47:463.10, one time fee of $25.00 at initial issuance.

d. Street Rod, R.S. 47:463.12, one time fee of $25.00 at initial issuance.

e. Grotto, R.S. 47:463.14, one time fee of $25.00 at initial issuance.

f. Reserve Forces, R.S. 47:463.15, one time fee of $25.00 at initial issuance.

g. Private Shiner, R.S. 47:463.22, one time fee of $25.00 at initial issuance.

h. Retired Firefighters, R.S. 47:463.23, one time fee of $25.00 at initial issuance.

i. Retired La Officer, R.S. 47:463.24, one time fee of $25.00 at initial issuance.

j. Civil Air Patrol, R.S. 47:463.28, one time fee of $25.00 at initial issuance.

k. Professional Firefighter, R.S. 47:463.30, one time fee of $25.00 at initial issuance.

l. College and University, R.S. 47:463.31, royalty fee paid to school every two years for use of insignia, proceeds to be used for scholarships.

m. Knights of Columbus, R.S. 47:463.32, one time fee of $25.00 at initial issuance.

3. Those plates with only a special fee and an exemption from the regular registration license tax with the fee going to the general fund. The special fee was not used in connection with the administration laws governing vehicle registrations and license plates. These people will now pay more. Additionally, the vehicle registration license tax goes to the Transportation Trust Fund or the Highway Fund No. 2, and not to the general fund so general fund dollars will be less because of the injunction, in instances such as the following:

a. Antique, R.S. 47:463.8

b. Old Antique, R.S. 47:463.8

c. Personalized Antique, R.S. 47:463.8.

Consequently, the federal court injunction has enjoined the collection of certain taxes levied by the Louisiana Legislature, has enjoined certain exemptions granted by the Louisiana Legislature from those taxes, has changed the system of taxes that the Louisiana Legislature has established with respect to the motor vehicle registration license tax and license plates and has caused the allocation of state funds to be contrary to the express will of the Louisiana Legislature as indicated in the annual appropriations bill.

/s/ Rosemary Fritz
Rosemary Fritz
Deputy Assistant Secretary
Louisiana Department of Public Safety Corrections,
Office of Motor Vehicles

Sworn to and subscribed before me, this 4th day of August, 2003.

/s/ [Illegible]
Notary Public

No. 05-1222

IN THE
SUPREME COURT OF THE UNITED STATES

DOREEN KEELER; and
PLANNED PARENTHOOD OF LOUISIANA, INC.,

Petitioners,

— v. —

RICHARD L. STALDER, Secretary,
Department of Public Safety and Corrections;
and JOHN KENNEDY, State Treasurer,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

ARGUMENT 1

1. The Two "Uncontroverted" Affidavits Filed by the State in the District Court Were Properly Ignored by the District Court (and Petitioners) Because They Assert No Genuine Issues of Fact. 2

2. The State's Contention that Special License Plates Are Pure Government Speech Does Not Undermine the Importance of the Question Presented About the TIA. 4

CONCLUSION 6

APPENDIX: LOUISIANA DEPARTMENT OF PUBLIC SAFETY WEBSITE PAGES

TABLE OF AUTHORITIES

Cases **Page**

ACLU of Tennessee v. Bredesen, 441 F.3d 370, (6th Cir. 2006), *petition for cert. filed*, No. 05-1389 (U.S. Apr. 28, 2006) 1, 5

Denius v. Dunlap, 303 F.3d 919 (7th Cir. 2003) 3

Henderson v. Stalder, 434 F.3d 352 (5th Cir. 2005) 5

Henderson v. Stalder, 265 F. Supp. 2d 699 (E.D. La. 2003) 4

Hibbs v. Winn, 542 U.S. 88 (2004) 1

Planned Parenthood of S.C. v. Rose, 361 F.3d 786 (4th Cir. 2004), *cert. denied*, 543 U.S. 1119 (2005) 5

Sons of Confederate Veterans, Inc. v. Comm'r, Va. Dep't of Motor Vehicles, 305 F.3d 241 (4th Cir. 2002) 1, 5

United States Constitution and Statute

U.S. Const. Amend I 1, 4, 5

28 U.S.C. § 1341 ("Tax Injunction Act") 1, 2, 4, 5, 6

Petitioners respectfully submit the following reply brief in further support of their petition for a writ of certiorari.

ARGUMENT

The State Does Not Even Attempt to Counter the Argument That The Rules and Practices of This Court Strongly Favor Granting the Petition to Resolve a Conflict in the Circuits on an Important Question of Federal Law.

Respondents ("the State") do not even attempt to counter the argument made in the Petition that this Court should resolve the split between the court below and the Sixth Circuit in *ACLU of Tennessee v. Bredesen*, 441 F.3d 370 (6th Cir. 2006), *petition for cert. filed*, No. 05-1389 (Apr. 28, 2006), over the applicability of the Tax Injunction Act ("TIA"), 28 U.S.C. § 1341, to charges states make for special license plates.[1] Nor does the State make more than a cursory response to Petitioners' argument that the decision of the court of appeals conflicts with this Court's decisions construing the TIA because the court of appeals applied the TIA to bar a suit by parties who are not contesting their own state tax liability. *Hibbs v. Winn*, 542 U.S. 88, 104 (2004) ("[t]hird-party suits not seeking to stop the collection (or contest the validity) of a tax *imposed on plaintiffs* . . . were

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[1] The State cites *Bredesen* only once, and then only in its argument that Louisiana's special license plates constitute government speech exempt from First Amendment scrutiny. *See* Resp. Br. in Opp. at 19. *Bredesen* holds that the charges assessed for special license plates are contract payment, not taxes. *See Bredeson* 441 F.3d at 374. *See also* n.3 *infra*; *Sons of Confederate Veterans v. Comm'r, Va. Dept. of Motor Vehicles*, 305 F.3d 241, 246 (4th Cir. 2002) (Luttig, J., respecting denial of rehearing en banc) ("*When a special license plate is purchased*, it is really the private citizen who engages the government to publish his message . . . ") (emphasis added).

outside Congress' purview.").[2] Instead, the State seeks to deflect the Court's attention from the scope of the TIA -- the basis for the decision of the court of appeals -- by launching an extraneous inquiry, laced with false allegations of impropriety by the district court and Petitioners, focussing on (1) the affidavit "evidence" the State submitted to the district court, *see, e.g.*, Resp. Br. in Opp. at 2-3; and (2) the State's argument, not reached by the court of appeals, that the state statutes enjoined by the district court are all instances of pure government speech, *see id.* at 5-7, 15-20. To correct the misimpressions conveyed by the State, we address these two features of the State's brief in opposition below.

1. *The Two "Uncontroverted" Affidavits Filed by the State in the District Court Were Properly Ignored by the District Court (and Petitioners) Because They Assert No Genuine Issues of Fact.*

The State makes great hay of two affidavits filed in the district court which it touts as "uncontroverted," Resp. Br. in Opp. at 3, and reproduced in an appendix to its brief in opposition. Neither affidavit contains any relevant facts at all; rather, each simply recites conclusions of law. The first (Hodges) is devoid of factual information within the affiant's knowledge, and is instead rife with rank speculation and legal conclusions. *See, e.g.*, Hodges Affidavit at R. App. 11 ("It is AFFIANT's understanding, *based on her attorney's advice*, that the Choose Life Advisory Council is to formulate merely an advisory recommendation as to the disbursement of the [Choose Life] funds to recipients, that the Louisiana Legislature will take such advisory recommendation into consideration, but that it is only the Louisiana Legislature which has the discretion to make a final decision, in the act of appropriations applicable to such funds, as to the precise disposition of such funds and how they are to be disbursed.")

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[2] The State's entire discussion of *Hibbs* is confined to one ten-line paragraph. *See* Resp. Br. in Opp. at 13-14.

(emphasis added). It was properly accorded no weight by the district court.

The second affidavit (Fritz) was submitted in support of a stay pending appeal *after* the district court granted summary judgment to Plaintiffs and permanently enjoined Louisiana's special license plate scheme. It contains certain details about the prices charged for various Louisiana special license plates (all of which is contained in the statutes establishing these license plates). It repeatedly refers to these charges as "special fees," R. App. 12, 13, 14, and then announces the legal conclusions that these "special fees" are "taxes levied by the Louisiana Legislature" and that the district court's injunction "has changed the system of taxes that the Louisiana Legislature has established." R. App. 15. It is inappropriate for any court to give credence to these contradictory, self-serving conclusions of law couched as factual knowledge of an affiant.[3]

The State wrongly exploits these affidavits to play fast and loose with the history of the proceedings in this case and to impugn Petitioners' honesty. For example, the State asserts that Petitioners omitted reference to the fact that the district court ruled in favor of Petitioners on a motion for summary judgment. Resp. Br. in Opp. at 2. But this procedural fact is duly recounted on page 5 of the Petition. The State also impugns the district court judge, asserting that in granting summary judgment for Petitioners, the district

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[3] The contradictions contained in the Fritz affidavit are compounded by the current Louisiana Department of Public Safety website, which contains an order form for special license plates, http://omv.dps.state.la.us/Special%20Plates/SpecialPlates2.asp, and announces that "Prices subject to change without notice. Quotes given are non-binding." http://omv.dps.state.la.us/Special%20Plates/SpecialPlates1.asp. The Court may take judicial notice of these web pages, *Denius v. Dunlap*, 303 F.3d 919, 926-27 (7th Cir. 2003), which are reproduced in an appendix to this brief for the Court's convenience.

court ignored factual disputes contained in the Hodges and Fritz affidavits. Resp. Br. in Opp. at 2. But the Fritz affidavit was not even filed until *after* summary judgment was granted. And of course the district court was free to discount the entire Hodges affidavit, which is simply a sworn version of the legal arguments the State made in favor of its argument that the special license plates are government speech.[4] The State now perpetuates this effort by seeking to bootstrap its legal arguments in this Court into "a matter of fact," Resp. Br. in Opp.at 2, by citing these very affidavits. More importantly, both affidavits are simply a smokescreen and distraction from the State's utter failure to present coherent arguments about the factors the Court considers in deciding whether to exercise its certiorari jurisdiction.

2. *The State's Contention that Special License Plates Are Pure Government Speech Does Not Undermine the Importance of the Question Presented About the TIA.*

The State's Brief in Opposition is largely devoted to an argument that Louisiana's special license plate scheme is purely government speech and hence exempt from First Amendment scrutiny. *See* Resp. Br. in Opp. at 5-7, 15-20. This argument was rejected by the district court, *Henderson*, 265 F. Supp. 2d 699, 713-17 (E.D. La. 2003) (A-39-47), and not reached by the court of appeals in view of its holding that the TIA ousted federal jurisdiction in this case. To the extent that the State makes this argument in order to suggest that the TIA holding of the court of appeals does not prevent direct federal review of an important constitutional question, the

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[4] The State's contention, moreover, that it has never invited private speakers to express themselves on Louisiana special license plates is directly contradicted by the Louisiana government web site of Respondent Stalder's department. That website announces "This site allows you to view Special Plates and calculate the cost to convert from your current plate to a Special plate." http://omv.dps.state.la.us/Special%20Plates/SpecialPlates1.asp.

State is simply wrong. Only one divided court -- the Sixth Circuit in *Bredesen* -- has held that special license plates constitute pure government speech. Numerous federal judges and courts have taken the opposing view, finding that special license plates contain enough elements of private speech on government property to require First Amendment scrutiny, including, specifically, viewpoint neutrality. *See, e.g., Sons of Confederate Veterans*, 305 F.3d at 242 (Wilkinson, C.J., concurring in denial of rehearing en banc) ("free speech values cannot help but be implicated" by Virginia special license plate); *id.* at 243 (Williams, J., concurring in denial of rehearing en banc) (expressly rejecting suggestion that Virginia special license plate constitutes "pure government speech"); *id.* at 247 (Luttig, J., respecting denial of rehearing en banc) ("fair to assume that . . . government will be forbidden from engaging in viewpoint discrimination," even assuming that message on special license plate is "hybrid" of government and private speech). The question whether such license plates constitute a forum subject to the First Amendment's requirement of viewpoint neutrality is indeed one as to which there is also a split in the Circuits,[5] and a petition for certiorari in *Bredesen* (No. 05-1389) is pending in this Court to resolve this division.[6]

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[5] The split is between the Sixth Circuit in *Bredesen*, and the Fourth Circuit in *Planned Parenthood of S.C. v. Rose*, 361 F.3d 786 (4th Cir. 2004), *cert. denied*, 543 U.S. 1119 (2005), which rejected the argument that a "Choose Life" license plate was government speech, instead holding that it was unconstitutional as impermissible viewpoint discrimination in a forum for speech.

[6] If this Court grants the petition in *Bredesen*, the resolution of the question presented there will control the merits of Petitioners' First Amendment claim. But Petitioners here must first obtain relief from the Fifth Circuit's TIA holding, and the Court should grant this Petition if it grants the *Bredesen* petition so that Petitioners here can vindicate their federal constitutional claims in fedeeral court.

The State's effort to minimize the importance of the constitutional question skirted by the Fifth Circuit by its extremely broad reading of the TIA is thus unavailing. *See Henderson v. Stalder*, 434 F.3d 352, 357 (5th Cir. 2005) (Higginbotham, J., dissenting from denial of rehearing *en banc*) (criticizing court's "'expansive reading' of 'tax'" under the TIA as an "aggressive run with the statute" which "create[s] a side door for federal judges determined to avoid a constitutional question") (A-83).

CONCLUSION

For the foregoing reasons, the Petition should be granted.

Respectfully submitted,

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Dated May 8, 2006.

APPENDIX

Louisiana Special Plate Inq

This site allows you to view Special Plates and calculate the cost to convert fr your current plate to a Special plate.

- Please be sure that you have properly titled and registered the vehicle in your name.
- Have your current registration available to enter and verify vehicle information
- Certain Special Plates have specific qualifications and eligibility requirements must be met.
- Special Plates can be issued to automobiles, trucks up to 10,000 lbs., and priv buses (motor homes). Some Special Plates are also available for issuance to motorcycles.
- Special plate fees vary.
- Special plate fees calculated on this site are valid for regular license plates on
- Click here to View the locations where you may purchase Special Plates. To contact the Specialized Plate and Title Unit you may call (225) 925-6371 or ca toll-free number 1-877-368-5463 for assistance.
- DISCLAIMER: Prices subject to change without notice. Quotes given are non-binding.

Continue

ExpressLane Department of Public

Military Honor Plate Inquiry
- Fees

Help
- OMV Home
- DPS Home

Feedback
- Survey
- Contact Us

Fee Calculation for Special Plates is a simple 5-step process

1. Enter your license plate number as shown on your current registration cer and click the "Submit" button
2. Select the Special plate you would like to order
3. Click the "Ordering Details" button for instructions and eligibility requireme
4. Fill in order form and print.
5. Mail in order form, documents specified, and a check for amount required

Enter your license plate number below:

Submit

ExpressLane Department of Public